

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE EASTERN DISTRICT OF TEXAS  
3                   MARSHALL DIVISION  
4  
5                   UNITED SERVICES AUTOMOBILE      ) (  
6                   ASSOCIATION  
7  
8                   VS.                                   ) (      CIVIL ACTION NO.  
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10   ) (  
11    2:18-CV-366-JRG  
12    ) (  
13    MARSHALL, TEXAS  
14    JANUARY 7, 2020  
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16    8:51 A.M.  
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## TRANSCRIPT OF JURY TRIAL

MORNING SESSION

BEFORE THE HONORABLE CHIEF JUDGE RODNEY GILSTRAP,  
UNITED STATES DISTRICT JUDGE

## APPEARANCES:

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36  
37 (Proceedings recorded by mechanical stenography, transcript  
38 produced on a CAT system.)

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08:51:20 1 P R O C E E D I N G S

08:51:20 2 (Jury out.)

08:51:21 3 COURT SECURITY OFFICER: All rise.

08:51:22 4 THE COURT: Be seated, please.

08:52:03 5 Are the parties prepared to read into the record

08:52:12 6 those items from the list of pre-admitted exhibits used

08:52:14 7 before the jury during yesterday's portion of the trial?

08:52:18 8 MR. BUNT: Yes, Your Honor, we are.

08:52:19 9 THE COURT: Please proceed.

08:52:21 10 MR. BUNT: The following Plaintiff exhibits were

08:52:25 11 used yesterday: No. 36 -- all these are Plaintiff's

08:52:33 12 exhibits -- No. 36, 39, 43, 44, 57, 143, 195, 1062, 1186,

08:52:46 13 and 1187.

08:52:48 14 THE COURT: All right. Is there any objection

08:52:52 15 from Defendant as to that rendition from Plaintiff?

08:52:55 16 MR. UNDERWOOD: No objection, Your Honor.

08:52:56 17 THE COURT: Does Defendant have anything to add?

08:52:59 18 MR. UNDERWOOD: We do. The following Defendant's

08:53:01 19 exhibits were used, DTX-3, DTX-4, and DTX-8.

08:53:07 20 THE COURT: All right. Does Plaintiff have any

08:53:11 21 objection to that offer from Defendant?

08:53:13 22 MR. BUNT: No, Your Honor.

08:53:13 23 THE COURT: All right, counsel. Thank you.

08:53:16 24 MR. SHEASBY: Your Honor, one issue before we

08:53:18 25 begin. Can Mr. Brady have a copy of the exhibits he's

08:53:20 1 going to be cross-examined on, and can we have them, as  
08:53:23 2 well?

08:53:23 3 THE COURT: Do you not have them?

08:53:25 4 MR. SHEASBY: We do not.

08:53:26 5 THE COURT: I mean, that issue came up yesterday  
08:53:27 6 at the bench, and I would assume it would have been  
08:53:29 7 resolved.

08:53:31 8 MR. HILL: Your Honor, what they're asking for is  
08:53:33 9 special binders for the witness. They have the exhibits.  
08:53:36 10 I don't have to identify on cross which exhibits I want to  
08:53:39 11 use with the witness in advance. That's what's being  
08:53:43 12 requested.

08:53:43 13 I will represent, though, to the Court I don't  
08:53:44 14 think I'm going to hit any new Defendant exhibits. I think  
08:53:47 15 the only exhibits will be other Plaintiff exhibits that  
08:53:50 16 have been used with the witness in his direct. So I don't  
08:53:53 17 think we're going to run into an issue. But I'll -- I  
08:53:56 18 mean, I can check and see, but it's -- that's the issue.  
08:53:59 19 It's not that they don't have our exhibits.

08:54:01 20 MR. SHEASBY: Your Honor, Mr. Brady is entitled to  
08:54:03 21 have in front of him a physical copy of what he's going to  
08:54:07 22 be examined on. It's been the case in every other  
08:54:10 23 examination in this trial and the last one. And I do not  
08:54:13 24 understand why this has become an issue.

08:54:15 25 THE COURT: Typically, on direct and on cross,

08:54:17 1 each side gets up and passes out a bound binder that the  
08:54:21 2 witness is going to have before them on the direct and then  
08:54:23 3 on the cross. Are we not doing that here for some reason?

08:54:27 4 MR. HILL: Your Honor, I'm told it's right here,  
08:54:30 5 and I can pass it over. For cross-examination, that's not  
08:54:32 6 my typical practice, Judge. And even in this Court, and  
08:54:35 7 I've done it this way many times without complaint, so...

08:54:43 8 THE COURT: Well, if the witness is going to be  
08:54:45 9 asked questions about specific documents, the witness needs  
08:54:48 10 to have a copy of that document available to him. If you  
08:54:50 11 want to hand it up at the time so you don't telegraph where  
08:54:54 12 you're going or if you want to put the binder up there so  
08:54:57 13 that the witness can then turn to a specified page, the  
08:55:00 14 witness is entitled to see what the witness is going to be  
08:55:02 15 questioned about.

08:55:14 16 MR. HILL: Hang on, Judge, I'm told there's a  
08:55:17 17 discrepancy --

08:55:19 18 THE COURT: If you're going to mutter in the back  
08:55:21 19 of the room, it's not going to be picked up on the  
08:55:23 20 transcript. Either speak up or don't speak.

08:55:42 21 Do we have Mr. Brady here? We do. Do you want to  
08:55:47 22 return to the witness chair, Mr. Brady? I remind you you  
08:55:51 23 remain under oath.

08:55:52 24 MR. HILL: All right. Judge, we have it coming  
08:55:55 25 up.

08:55:56 1                   THE COURT: All right. Before I bring the jury  
08:55:57 2 in, I met with counsel this morning in chambers. I gave  
08:56:00 3 counsel specific guidance. I'm going to review that on the  
08:56:02 4 record at this time. This relates to the lengthy  
08:56:05 5 discussion that Mr. Sheasby and Mr. Hill had with the Court  
08:56:10 6 at the end of the day yesterday at the bench about the  
08:56:14 7 proper approach to cross-examining Mr. Brady by the  
08:56:18 8 Defendant concerning the asserted claims and the other  
08:56:28 9 issues that we discussed at the bench yesterday about the  
08:56:30 10 continuing cross-examination.

08:56:31 11                   My guidance in that regard is as follows: The  
08:56:34 12 Defendants should focus on non-infringing alternatives  
08:56:39 13 which achieve the same or similar benefits as are described  
08:56:42 14 by the patents.

08:56:43 15                   Defendants may not describe how each element of  
08:56:47 16 the patent is known in the prior art, however. To do so  
08:56:52 17 would risk the jury taking that testimony as evidence as  
08:56:56 18 obviousness, even though the references being relied on by  
08:56:59 19 the Defendant are not presently asserted as prior art.

08:57:01 20                   Allowing the Defendant to probe non-infringing  
08:57:05 21 alternatives, let's them fully explore Georgia-Pacific  
08:57:07 22 Factor 9 and the additional value of the patent over the  
08:57:10 23 prior art without risking jury confusion as to whether this  
08:57:15 24 testimony or the references cited go to obviousness and  
08:57:18 25 invalidity.

08:57:18 1 The Court notes that with the parties' approval  
08:57:24 2 and consent, it instructed the jury yesterday on the  
08:57:27 3 anticipation and obviousness and invalidity in general,  
08:57:31 4 even though the Court was advised yesterday in the middle  
08:57:34 5 of the trial that the posture of the parties with regard to  
08:57:38 6 those invalidity defenses was substantially different.

08:57:41 7 The Court's mindful of the Exmark decision cited  
08:57:45 8 by the Defendant and -- but finds it to be distinguishable  
08:57:50 9 in this particular case. In Exmark the Court found that  
08:57:55 10 the patent, quote, made clear, close quote, that the  
08:57:57 11 patented improvement was only related to a single element  
08:58:00 12 and focusing on that element was appropriate. That is not  
08:58:03 13 the case here. The Plaintiff has made no such concession,  
08:58:10 14 and to follow that same approach, would be improper in the  
08:58:12 15 Court's view.

08:58:12 16 The Court reaches the conclusion and gives this  
08:58:15 17 guidance in large part based on the guidance and provisions  
08:58:22 18 of Federal Rule of Evidence 403, finding that having  
08:58:25 19 already instructed the parties on anticipation,  
08:58:27 20 obviousness, and invalidity in general, the continued  
08:58:30 21 examination by the Defendant as undertaken yesterday would  
08:58:33 22 unavoidably create jury confusion and have a prejudicial  
08:58:38 23 effect not otherwise easily cured.

08:58:41 24 That's the guidance, in essence, I gave the  
08:58:43 25 parties in chambers. That's the guidance I'm giving the

08:58:46 1 parties as to the continued cross-examination and redirect  
08:58:48 2 of this witness, Mr. Brady.

08:58:50 3 All right. With that, let's bring in the jury.

08:59:04 4 Mr. Hill, you may return to the podium if you'd  
08:59:07 5 like.

08:59:07 6 MR. HILL: Thank you, Your Honor.

08:59:09 7 COURT SECURITY OFFICER: All rise.

08:59:44 8 (Jury in.)

08:59:45 9 THE COURT: Good morning, ladies and gentlemen.

08:59:52 10 Please be seated.

08:59:52 11 Welcome back, members of the jury. We will  
08:59:57 12 continue this morning with the Defendant's  
09:00:00 13 cross-examination of the witness, Mr. John Brady.

09:00:04 14 Mr. Hill, you may continue with your  
09:00:05 15 cross-examination.

09:00:06 16 MR. HILL: Thank you, Your Honor.

09:00:06 17 JOHN BRADY, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

09:00:06 18 CROSS-EXAMINATION CONTINUED

09:00:06 19 BY MR. HILL:

09:00:06 20 Q. Good morning, Mr. Brady.

09:00:10 21 A. Good morning, Mr. Hill.

09:00:10 22 Q. Mr. Brady, let's talk about how USAA moved from  
09:00:16 23 scanners to mobile phones and when that occurred, okay?

09:00:21 24 A. Okay.

09:00:21 25 Q. Now, the very first prototype for the Deposit@Home

09:00:27 1 product was a flatbed scanner, correct?

09:00:30 2 A. That was correct.

09:00:31 3 Q. It wasn't a digital camera, right?

09:00:33 4 A. It was a flatbed scanner.

09:00:34 5 Q. All right. Not a mobile phone?

09:00:37 6 A. Flatbed scanner.

09:00:39 7 Q. And that prototype was demonstrated to you by a

09:00:42 8 gentleman named Bharat Prasad in 2005; is that right?

09:00:45 9 A. That's right.

09:00:45 10 Q. And just so we're clear, Mr. Prasad, he's one of the

09:00:49 11 two inventors that are named on these two patents, right?

09:00:52 12 A. He's one of multiple inventors.

09:01:00 13 Q. I said one of the two. I apologize. He is named on

09:01:00 14 both, right?

09:01:00 15 A. Yes, he is.

09:01:00 16 Q. Okay. And Mr. Prasad, he's still with USAA today,

09:01:04 17 correct?

09:01:04 18 A. Correct.

09:01:04 19 Q. Still works there?

09:01:05 20 A. Correct.

09:01:05 21 Q. All right. Now, when it launched in the summer of

09:01:09 22 2006, Deposit Home was still focused on flatbed scanners,

09:01:20 23 right?

09:01:20 24 A. I'm not sure I would agree with that.

09:01:20 25 Q. Okay. Well, as of October 25th, 2006, in an email on

09:01:21 1 which you were copied, USAA engineers said that they will  
09:01:25 2 need to determine if we should allow devices other than  
09:01:30 3 scanners. Do you recall that email?

09:01:31 4 A. I do. I think there's more to it than that.

09:01:34 5 Q. Okay. Well, let's take a look at that email. That's  
09:01:37 6 Plaintiff's Exhibit 36. I believe you talked about it in  
09:01:39 7 your direct examination; do you recall it? We've got it  
09:01:43 8 here on the screen.

09:01:44 9 MR. HILL: And if we can go to the last page of  
09:01:50 10 it.

09:01:51 11 Q. (By Mr. Hill) And here's the portion of the email at  
09:01:53 12 the top that I was referring to. This appears on -- I  
09:01:57 13 believe the top of the last page.

09:01:59 14 And it states: Thought you might find this  
09:02:04 15 interesting. Looks like we have some creative members. We  
09:02:07 16 had discussed the fact that any TWAIN capable device should  
09:02:10 17 work but had not tried this in the lab. We will need to  
09:02:14 18 determine if we should allow devices other than scanners  
09:02:17 19 and, if so, what the risk/issues will be.

09:02:20 20 Do you see that, sir?

09:02:21 21 A. I do see that.

09:02:22 22 Q. And that email was sent on October 25th, 2006, correct?

09:02:27 23 A. That is correct.

09:02:30 24 Q. And if we look at the -- well, we'll check that in a  
09:02:34 25 minute, but five days -- this date is five days before the

09:02:38 1 specifications that we're talking about in this case that

09:02:46 2 are at issue for these patents, five days before those?

09:02:50 3 This was just five days before it, right?

09:02:52 4 A. Five days before October 31st, yes.

09:02:55 5 Q. Right. Five days before those specifications will be

09:02:58 6 filed with the Patent Office, correct?

09:02:59 7 A. Yes.

09:03:01 8 Q. And the USA engineer -- USAA engineers wrote to you and

09:03:09 9 they said, we will need to determine if we should allow

09:03:12 10 devices other than scanners, correct?

09:03:14 11 A. I don't think that's completely accurate, no.

09:03:16 12 Q. Let's see if you can answer my question, Mr. Brady.

09:03:19 13 The USAA engineers, they wrote to you --

09:03:23 14 THE COURT: Mr. Hill, if you think the witness is

09:03:24 15 being non-responsive to your question, raise it with me.

09:03:28 16 Don't tell him, you think you can answer my question.

09:03:32 17 MR. HILL: Yes, sir, Your Honor.

09:03:33 18 THE COURT: All right.

09:03:33 19 Q. (By Mr. Hill) Mr. Brady, let's look at what they wrote

09:03:34 20 here. The email writing to you says: We will need to

09:03:35 21 determine if we should allow devices other than scanners,

09:03:39 22 correct?

09:03:39 23 A. This was not one of our engineers. That's what I'm

09:03:46 24 having trouble with.

09:03:48 25 Q. All right.

09:03:48 1 A. This is not one of our engineers.

09:03:50 2 MR. HILL: Let's look at the top of this email,

09:03:51 3 the "to" line, if we can, Mr. Bakale.

09:03:55 4 Q. (By Mr. Hill) This is from a gentleman named Rickey

09:03:58 5 Burks; is that right?

09:03:59 6 A. That's correct.

09:03:59 7 Q. And who is Mr. Burks?

09:04:01 8 A. Rickey was my manager at the time.

09:04:05 9 Q. Your manager?

09:04:06 10 A. Yes.

09:04:06 11 Q. Okay. And you were -- so he was your boss?

09:04:11 12 A. Yes.

09:04:11 13 Q. I'm with you.

09:04:12 14 THE COURT: Mr. Brady, you remember yesterday me

09:04:14 15 asking you not to refer to individuals by first name only.

09:04:17 16 THE WITNESS: I apologize again, I'm sorry.

09:04:19 17 THE COURT: I understand this is the first time

09:04:21 18 you've testified in Court, and I understand that may not be

09:04:24 19 the usual way you speak, but it's important that we not

09:04:27 20 talk about individuals by first name only.

09:04:29 21 THE WITNESS: I apologize. I'm sorry.

09:04:31 22 THE COURT: Okay. Let's continue.

09:04:33 23 Q. (By Mr. Hill) And this entire email string, Mr. Brady,

09:04:41 24 five days before the first applications were filed was the

09:04:41 25 first time that someone had used something other than a

09:04:44 1 scanner in the Deposit@Home project, correct?

09:04:46 2 A. It's the first time one of our members had used

09:04:53 3 something.

09:04:53 4 Q. And that individual was not a USAA engineer; it was a

09:04:54 5 member, correct?

09:04:55 6 A. That's correct.

09:04:55 7 Q. And they used a digital camera, right?

09:04:57 8 A. Uh-huh.

09:04:58 9 Q. They didn't --

09:04:59 10 A. Yes.

09:04:59 11 Q. -- use a mobile phone?

09:05:03 12 A. No.

09:05:04 13 Q. And it was a digital camera, we know, that had to be

09:05:07 14 connected to a computer through a TWAIN driver, correct?

09:05:11 15 A. That was the way we did it.

09:05:16 16 Q. And a TWAIN driver, that's a piece of software that

09:05:20 17 connects two different devices together, right?

09:05:23 18 A. That's a -- that's an example, yes.

09:05:25 19 Q. For instance, if I have my printer and I've got my

09:05:29 20 computer, I'll have to have a driver usually to have those

09:05:33 21 two things communicate; isn't that right?

09:05:35 22 A. It's often -- you often need a driver for

09:05:39 23 communication.

09:05:40 24 Q. Now, at that same time in the same email string,

09:05:44 25 Mr. Brady, Plaintiff's Exhibit 36, a phone is brought up,

09:05:48 1 correct?

09:05:48 2 A. That is correct.

09:05:51 3 Q. So if we look at the next line up in the email, the

09:05:56 4 next piece of the string, we see an email from Mr. Luby.

09:06:06 5 Do you see that, sir?

09:06:07 6 A. I see that.

09:06:08 7 Q. Who is Mr. Luby?

09:06:10 8 A. Mr. Luby was the -- the president of the bank.

09:06:15 9 Q. And Mr. Luby was president of the USAA bank at the time

09:06:21 10 this was written?

09:06:21 11 A. Yes.

09:06:21 12 Q. All right. And Mr. Luby is not an inventor on any of

09:06:24 13 these patents, is he?

09:06:25 14 A. No, he is not.

09:06:26 15 Q. And Mr. Luby says here in his email: How about a

09:06:32 16 phone? And asked: Could we get enough resolution and a

09:06:39 17 TWAIN driver interface to a phonecam?

09:06:43 18 Do you see that?

09:06:43 19 A. That's what Mr. Luby is asking.

09:06:47 20 Q. But then Mr. Huth, he replies back to Mr. Luby in the

09:06:51 21 next email up the chain, doesn't he?

09:06:54 22 A. Yes, he does.

09:06:57 23 Q. And if we look at that, he replies back, and he says

09:07:00 24 that camera phones aren't typically high quality enough

09:07:05 25 photos.

09:07:10 1 Let that thing start moving around. Sorry about  
09:07:11 2 that, Mr. Brady.

09:07:11 3 That's what he says in his response, correct?

09:07:18 4 A. That's what he says.

09:07:20 5 Q. He goes on to say: But there is software to enhance  
09:07:27 6 that. We would have to see how to automate that.

09:07:29 7 Do you see that?

09:07:30 8 A. I see that. We knew we needed to improve that for our  
09:07:35 9 members.

09:07:35 10 Q. And Mr. Huth, he is one of the inventors on the  
09:07:43 11 patents, correct?

09:07:43 12 A. Yes, he is.

09:07:44 13 Q. Now, he makes mention to a piece of this email a little  
09:07:49 14 further down where it references of Mike Morris. You  
09:07:52 15 talked about that yesterday, didn't you, sir?

09:07:53 16 A. I did, yes.

09:07:55 17 Q. He says: Mike Morris did -- did check and use of a  
09:07:58 18 camera to capture the image is included in our patent  
09:08:00 19 application.

09:08:01 20 Do you recall that?

09:08:01 21 A. I do. Yes, it is.

09:08:03 22 Q. And that's the patent applications that were ultimately  
09:08:10 23 filed as part of this October 31, 2006, filing, correct?

09:08:12 24 A. That is correct.

09:08:13 25 Q. And it doesn't say Mr. Morris checked for the use of a

09:08:19 1 mobile phone, does it?

09:08:19 2 A. Mobile phones have cameras.

09:08:22 3 MR. SHEASBY: Your Honor, I object.

09:08:24 4 THE COURT: State your objection.

09:08:25 5 MR. SHEASBY: This is a violation of the Court's

09:08:28 6 ruling on proper written description. The word "mobile

09:08:33 7 phone" did not occur in the claims of the patent. Mobile

09:08:38 8 phone does not appear in the claims of the patent.

09:08:40 9 THE COURT: You're going to have to speak up,

09:08:42 10 Mr. Sheasby.

09:08:42 11 MR. SHEASBY: Sir, the word "mobile phone" does

09:08:44 12 not appear in the claims of the patent. It's a mobile

09:08:47 13 device or portable device. This could only go to a

09:08:50 14 stricken defense. This has nothing to do with their

09:08:53 15 defense on written description.

09:08:54 16 THE COURT: What's your response, Mr. Hill?

09:08:56 17 MR. HILL: Your Honor, I'm asking a witness about

09:08:58 18 an admitted exhibit that he discussed in his direct

09:09:01 19 examination, and we're exploring what it says and what it

09:09:04 20 doesn't say. I'm not making any argument about it. I'm

09:09:07 21 not characterizing it in any way. I'm establishing what is

09:09:11 22 the contents of a document. That's proper

09:09:13 23 cross-examination.

09:09:14 24 THE COURT: Restate your question for the witness.

09:09:16 25 Q. (By Mr. Hill) Mr. Brady, what he says here is we

09:09:19 1 checked for the use of a camera to capture the image is  
09:09:22 2 included in our patent application. What he does -- he  
09:09:24 3 does not say a mobile phone, does he?

09:09:27 4 MR. SHEASBY: Your Honor, objection. The claims  
09:09:29 5 do not require the use of a mobile phone. This is  
09:09:32 6 improper.

09:09:32 7 THE COURT: I'm going to overrule the objection.

09:09:35 8 You can answer the question, Mr. Brady.

09:09:37 9 A. That sentence, this -- this email is discussing mobile  
09:09:46 10 phones. That -- you're asking if that sentence has it.  
09:09:49 11 That sentence does not, but this email is discussing mobile  
09:09:54 12 phones.

09:09:54 13 Q. (By Mr. Hill) So, again, if we look at the comment  
09:10:00 14 above from Mr. Huth -- Mr. Huth, excuse me, he says:  
09:10:05 15 Camera phones aren't typically high quality photos.

09:10:08 16 Right?

09:10:08 17 A. There were camera phones at the time that were high  
09:10:12 18 enough quality. That's what he says, yes.

09:10:14 19 MR. HILL: Objection, nonresponsive, Your Honor.  
09:10:16 20 Move to strike.

09:10:20 21 THE COURT: The question, Mr. Brady, is: Does it  
09:10:25 22 say that the camera phones typically aren't high enough  
09:10:29 23 quality?

09:10:29 24 And your answer was: There were phones that were  
09:10:32 25 high enough quality. And that's non-responsive. You need

09:10:37 1 to -- I'm going to sustain the objection. You need to  
09:10:40 2 answer the question as asked.

09:10:41 3 Mr. Sheasby is going to get an opportunity to ask  
09:10:43 4 you follow-up questions after Mr. Hill is finished. And if  
09:10:47 5 Mr. Sheasby thinks there's something that needs to be  
09:10:49 6 revisited or clarified, he's certainly entitled to ask you  
09:10:51 7 about it again. So try to limit your answers to the  
09:10:54 8 specific question that's asked, all right?

09:10:55 9 THE WITNESS: Okay. Thank you for the  
09:10:57 10 clarification, sir.

09:10:58 11 Q. (By Mr. Hill) Mr. Brady, the email reads: Camera  
09:11:01 12 phones typically aren't high quality photos.

09:11:04 13 Correct?

09:11:04 14 A. Yes, that's what it says.

09:11:06 15 Q. And then when we look below, when he references Mike  
09:11:09 16 Morris, he says: Mike Morris did check, and the use of a  
09:11:14 17 camera -- right? That's what he says?

09:11:20 18 A. That's what he says.

09:11:21 19 Q. Doesn't say camera phone, does it?

09:11:23 20 A. It says camera.

09:11:24 21 Q. Now, USAA didn't start experimenting with digital  
09:11:36 22 phones or camera phones until 2007; isn't that correct,  
09:11:39 23 sir?

09:11:39 24 A. Yes, we started up a project in 2007.

09:11:41 25 Q. And 2007 was after the October 31, 2006, patent

09:11:44 1 specifications had already been filed, correct?

09:11:47 2 A. Yes, it was.

09:11:48 3 Q. Now, in fact, Mr. Brady, let's talk about what else

09:12:02 4 happened at USAA after -- after the filing of these

09:12:09 5 applications on October 31, 2006.

09:12:10 6 Now, on -- in November 2006, again, after the

09:12:14 7 filing of these applications, USAA started to think about

09:12:18 8 Deposit@Home Phase 2; isn't that right?

09:12:22 9 A. I'm sorry, the date again?

09:12:23 10 Q. In November of '06?

09:12:25 11 A. I believe that was about right, yes.

09:12:28 12 Q. And let me -- let me show you an exhibit to help with

09:12:31 13 that.

09:12:34 14 MR. HILL: Plaintiff's Exhibit 72, if we can,

09:12:37 15 Mr. Bakale.

09:12:38 16 Q. (By Mr. Hill) Do you recognize this document, sir?

09:12:40 17 MR. SHEASBY: Your Honor, may the witness have a

09:12:42 18 copy of the exhibit?

09:12:43 19 MR. HILL: Sure. I'm sorry, Your Honor.

09:12:44 20 May I approach to hand the witness a copy?

09:12:48 21 THE COURT: You may approach. Hand the document

09:12:50 22 to the Court Security Officer.

09:12:54 23 THE WITNESS: Thank you.

09:12:54 24 Q. (By Mr. Hill) Mr. Huth [sic], in that notebook there,

09:13:02 25 you'll find a copy of Plaintiff's Exhibit 72. Let me know

09:13:06 1 when you've located it.

09:13:09 2 A. Okay. I see it.

09:13:10 3 Q. Do you recognize that? Can you tell me what that

09:13:10 4 document --

09:13:14 5 A. I don't -- I don't recall seeing this before, no. But

09:13:15 6 I -- I see it.

09:13:16 7 Q. Is this a document that USAA would have generated?

09:13:20 8 A. This looks like one of our documents, yes.

09:13:24 9 Q. And it state that it was a -- a draft presentation by

09:13:28 10 Troy Huth, correct?

09:13:32 11 A. Yes, that's what it says.

09:13:34 12 Q. And also a Mr. Mawyer? Did I read that right?

09:13:40 13 A. Yes, Mr. Mawyer.

09:13:43 14 Q. Are both of those gentlemen named inventors on these

09:13:47 15 patents?

09:13:47 16 A. Not both of them.

09:13:52 17 Q. Just Mr. Huth?

09:13:53 18 A. Just Mr. Huth.

09:13:54 19 Q. All right. And so in November 2006 when this document

09:14:03 20 was created, there's no mention whatsoever of phones,

09:14:07 21 mobile phones, or camera phones in this draft, is there,

09:14:10 22 sir? Feel free to page through it.

09:14:13 23 We'll do the same.

09:14:14 24 MR. HILL: Can we see the next page, Mr. Bakale?

09:14:18 25 This is the second page, third -- slow down, Mr. Bakale,

09:14:22 1 please -- the fourth, the fifth. I believe that's the end.

09:14:35 2 Q. (By Mr. Hill) No mention of phones, mobile phones, or  
09:14:39 3 camera phones in that draft, is there, Mr. Brady?

09:14:41 4 A. Are you asking about the word "mobile phone," or are  
09:14:43 5 you asking about concepts related to mobile phone?

09:14:46 6 Q. I'm asking does mobile phones, camera phones, or --

09:14:50 7 MR. SHEASBY: Your Honor, may we approach?

09:14:52 8 THE COURT: Approach the bench.

09:14:53 9 (Bench conference.)

09:15:02 10 MR. SHEASBY: Your Honor, I request a limiting  
09:15:04 11 instruction. The word "mobile phones," "camera phones"  
09:15:07 12 appear nowhere in the patent. This is an improper written  
09:15:09 13 description argument, and it could only go to enablement,  
09:15:12 14 which is not at issue in this case. This is not proper  
09:15:14 15 examination of this witness.

09:15:16 16 The only reason that use of mobile phone would be  
09:15:18 17 relevant is if, one, that's what the claim required, or,  
09:15:21 18 two, if it went to enablement. They have no enablement  
09:15:25 19 defense. And the claims don't require this. I would ask  
09:15:27 20 respectfully for a limiting instruction to disregard all  
09:15:30 21 this testimony. The date on which a mobile phone was used  
09:15:33 22 has no relevance to possession of a claim that relates  
09:15:36 23 generically to a mobile device or --

09:15:40 24 MS. GLASSER: There's actually a motion in limine  
09:15:41 25 on this exact topic to not bring enablement into the case.

09:15:46 1                   THE COURT: All right. First of all, if there's a  
09:15:50 2 motion in limine, I need to hear about it from --  
09:15:52 3 Ms. Glasser, my point is, this is Mr. Sheasby's witness.  
09:15:58 4 I'm not going to let the Defendants tag team me with six  
09:16:01 5 different lawyers contributing to the objection. And you  
09:16:03 6 shouldn't contribute to Mr. Sheasby's. If you want to  
09:16:06 7 suggest to him that he raise something with me when he  
09:16:09 8 comes to the bench, that's fine. But we don't have time to  
09:16:12 9 have a community communication.

09:16:14 10                   What's your response, Mr. Hill?

09:16:16 11                   MR. HILL: Your Honor, this is a Plaintiff's  
09:16:19 12 exhibit they've put into evidence and that I am questioning  
09:16:22 13 a fact witness about its contents. That is perfectly  
09:16:26 14 permissible cross. I haven't suggested anything in my  
09:16:28 15 questions. I've asked him: What does the document reflect  
09:16:32 16 and what doesn't it reflect?

09:16:33 17                   Now, they may have arguments about what we can do  
09:16:36 18 with that in argument later, but in terms of putting this  
09:16:39 19 evidence that they've put in the record in front of their  
09:16:41 20 witness and asked him about the contents of the document,  
09:16:44 21 there is nothing objectionable about that.

09:16:47 22                   And more importantly, it does not go to an  
09:16:49 23 enablement defense. What it goes to is to show its context  
09:16:53 24 for our written description defense, Your Honor. We say  
09:16:55 25 they didn't write down the invention. And there's a reason

09:16:58 1 they didn't write it down. They don't talk about it  
09:17:01 2 anywhere. And it's more credible that they didn't write it  
09:17:04 3 down if they'd also -- don't seem to be talking about it  
09:17:07 4 until after the fact.

09:17:08 5                   That is circumstantial evidence of what was going  
09:17:11 6 on, why they wrote what they wrote, how they wrote what  
09:17:14 7 they wrote, and we say what they wrote doesn't reflect the  
09:17:18 8 full scope of the invention. And this document will  
09:17:21 9 ultimately go to that.

09:17:23 10                   Now, that's argument. And I haven't made that  
09:17:24 11 argument through this witness. I've asked him fact  
09:17:26 12 questions.

09:17:27 13                   MR. SHEASBY: He asked: Does the word "mobile  
09:17:29 14 phone" occur in the patent? Sorry. He asked: Does mobile  
09:17:33 15 phone occur in the patent? It's out there. I did not  
09:17:35 16 introduce this document. This only goes to enablement.  
09:17:38 17 This is no -- written description is based on what is in  
09:17:42 18 the specification.

09:17:42 19                   THE COURT: All right. I've heard enough. I've  
09:17:43 20 heard enough, counsel. I'm not going to instruct the jury  
09:17:46 21 at this point. I'm going to direct the Plaintiff to  
09:17:48 22 address it in whatever manner the Plaintiff thinks is  
09:17:52 23 proper through their redirect examination of the witness.

09:17:54 24                   But at this point, I'm going to overrule the  
09:17:56 25 objection.

09:17:57 1 MR. SHEASBY: Thank you, Your Honor.

09:17:57 2 (Bench conference concluded.)

09:18:11 3 THE COURT: All right.

09:18:12 4 Q. (By Mr. Hill) All right, Mr. Brady --

09:18:14 5 MR. HILL: I'm sorry, Your Honor.

09:18:15 6 THE COURT: Let's proceed.

09:18:16 7 Q. (By Mr. Hill) Mr. Brady, this document that I had you

09:18:21 8 looking at, Plaintiff's Exhibit 72, doesn't mention phones,

09:18:24 9 mobile phones, or camera phones, doesn't contain those

09:18:27 10 words, does it?

09:18:28 11 A. I -- it does not contain the words. I think it

09:18:31 12 contains concepts related to that.

09:18:34 13 THE COURT: Mr. Brady, he didn't ask you if it

09:18:37 14 contained concepts related to that. Again, limit your

09:18:43 15 answers to the questions asked.

09:18:44 16 THE WITNESS: I apologize.

09:18:44 17 THE COURT: Let's continue, Mr. Hill.

09:18:46 18 Q. (By Mr. Hill) And it's not until December 2007,

09:18:48 19 Mr. Brady, over a year after these specifications were

09:18:52 20 filed in 2006, that there is a reference to a mobile phone

09:18:56 21 for the first time in USAA's internal documentation. Do

09:19:01 22 you know that, sir?

09:19:01 23 A. December 2006? Is that what you said?

09:19:05 24 Q. No, sir. I said it's over a year --

09:19:07 25 A. What date did you say?

09:19:08 1 Q. Until December 2007.

09:19:10 2 A. I don't think that's accurate, no.

09:19:11 3 Q. Well --

09:19:11 4 THE COURT: Gentlemen, it's important that you  
09:19:14 5 speak one at a time. The court reporter can't accurately  
09:19:18 6 transcribe what's said when both of you are talking at the  
09:19:22 7 same time. You both need to make sure the other is not  
09:19:25 8 talking before you start talking, all right?

09:19:27 9 Q. (By Mr. Hill) Mr. Brady --

09:19:28 10 MR. HILL: I'm sorry, Your Honor.

09:19:29 11 THE COURT: Go ahead, Mr. Hill.

09:19:32 12 MR. HILL: I'm talking over you now, I apologize.

09:19:34 13 THE COURT: I don't want anybody talking over  
09:19:36 14 anybody.

09:19:36 15 MR. HILL: Yes, sir.

09:19:37 16 Q. (By Mr. Hill) If we look at Plaintiff's Exhibit 1152,  
09:19:41 17 Mr. Brady, it's also in the notebook I handed you, this is  
09:19:50 18 an email from Mr. Prasad -- or, excuse me, a presentation  
09:19:55 19 by Mr. Prasad dated December 3rd, 2007; do you see that?

09:20:00 20 A. I see that.

09:20:05 21 Q. And if we look at Page 12, and this is discussing, it  
09:20:13 22 said on the first page, Deposit@Home Next Generation. Do  
09:20:17 23 you recall what Deposit@Home Next Generation was?

09:20:20 24 A. Yes, I do.

09:20:21 25 Q. What was that?

09:20:22 1 A. It was a continuation of our -- of our Deposit@Home  
09:20:29 2 efforts.

09:20:29 3 Q. And in this document, Mr. Brady, there is a reference  
09:20:35 4 to an iPhone on Page 12; do you see that, sir?

09:20:40 5 A. I see that.

09:20:41 6 Q. Now, you previously admitted USAA -- admitted USAA did  
09:20:57 7 not start experimenting with digital phones or camera  
09:21:00 8 phones until 2007; isn't that right, sir?

09:21:02 9 A. That is correct.

09:21:03 10 Q. Now, Mr. Brady, earlier, you talked a little bit with  
09:21:19 11 Mr. Sheasby yesterday -- it wasn't earlier today, but  
09:21:23 12 yesterday -- you talked about with Mr. Sheasby some  
09:21:24 13 portions of the patents in this suit; do you recall?

09:21:27 14 A. Yes.

09:21:27 15 Q. You talked about portions of the specifications from  
09:21:32 16 the '605 and the '608 [sic] patents; do you remember that?

09:21:34 17 A. I did, yes.

09:21:36 18 Q. Well, in the context of that, Mr. Sheasby [sic], I  
09:21:40 19 noticed, it seemed like you had a copy of patents that  
09:21:42 20 looked a little different than my copy of the patents. Do  
09:21:45 21 you have a copy of those patents up there with you?

09:21:47 22 A. The '681 and the '605 patents?

09:21:51 23 Q. Yes, sir.

09:21:52 24 A. I have -- I have copies, yes.

09:21:54 25 Q. What I noticed were your copies of the patents seemed

09:21:56 1 to have a number of tabs throughout them; am I right?

09:22:02 2 A. Yes.

09:22:02 3 Q. Can you -- can you hold that up where we can see it?

09:22:06 4 A. Yes.

09:22:06 5 Q. What are those tabs?

09:22:08 6 A. These are references to the specifications.

09:22:13 7 Q. All right. And are there -- are there notes in your

09:22:18 8 patents?

09:22:18 9 A. There's maybe one or two notes, yes.

09:22:23 10 Q. Okay. And what are these notes?

09:22:26 11 A. I'm -- these are notes to help me remember. I -- I'm

09:22:32 12 getting a little older. I don't always remember things.

09:22:37 13 Q. Okay. So this didn't come out in your direct

09:22:39 14 yesterday. So in the testimony you were giving Mr. Sheasby

09:22:41 15 about the contents of this patent, you were basing that

09:22:46 16 upon a marked-up version of the patents that has your own

09:22:50 17 tabs and internal notes in it?

09:22:52 18 A. I was looking at the exhibits.

09:22:56 19 Q. How did you prepare those notes, Mr. -- Mr. Brady?

09:22:59 20 A. I read through the patents.

09:23:02 21 Q. And just -- that's just notes you made on your own?

09:23:04 22 A. I made those notes on my own, yes.

09:23:07 23 Q. Okay. All right.

09:23:08 24 MR. HILL: All right. Your Honor, may I approach

09:23:10 25 and retrieve those copies of the patents from the witness?

09:23:13 1 THE COURT: Is there objection?

09:23:14 2 MR. SHEASBY: There's no objection, Your Honor.

09:23:18 3 THE COURT: All right. You may approach the

09:23:20 4 witness.

09:23:23 5 MR. HILL: Thank you, Your Honor.

09:23:46 6 Q. (By Mr. Hill) Now, Mr. Brady --

09:23:50 7 MR. HILL: If I can use the document camera,

09:23:52 8 Ms. Lockhart. Thank you.

09:23:54 9 Q. (By Mr. Hill) Mr. Brady, if we look here, what I've

09:23:57 10 retrieved from you is a copy of the patent that you had in

09:24:06 11 hand, and we've got some underlining and a reference to

09:24:12 12 Troy Huth here on the first page, and we've got that series

09:24:15 13 of tabs that I noticed. Do you see that?

09:24:17 14 A. I do, yes.

09:24:17 15 Q. And those are your tabs to flag what?

09:24:20 16 A. They're to help me remember where -- where things are.

09:24:23 17 Q. Okay. And I noticed also here there's a number of --

09:24:29 18 this is Column 8. Column 8 is a portion of the patent you

09:24:34 19 discussed yesterday, right?

09:24:37 20 A. Yes.

09:24:40 21 Q. And, in fact, if we look at this, what we see is

09:24:43 22 Column 8, this portion in here, we've got that reference to

09:24:47 23 PDAs; do you see that?

09:24:48 24 A. I see that, yes.

09:24:49 25 Q. You talked about that expressly, didn't you?

09:24:51 1 A. I did, yes.

09:24:52 2 Q. Talked about it there and there. Now, what are these

09:24:59 3 numbers on the sides?

09:25:00 4 A. Those are the line numbers.

09:25:04 5 Q. Line numbers for the patent?

09:25:08 6 A. Yes, you can see the line numbers going down the

09:25:11 7 bottom. They're going down the middle.

09:25:12 8 Q. You're corresponding with the center column there?

09:25:15 9 A. Yes, yes.

09:25:16 10 Q. Now, Mr. Brady, why did you need help remembering

09:25:29 11 what's in this specification?

09:25:31 12 A. As I mentioned, I'm getting older, and I -- I -- I need

09:25:35 13 help refreshing my memory at times.

09:25:38 14 Q. And just to make clear, you didn't participate in the

09:25:42 15 writing of this specification, did you?

09:25:43 16 A. I did not write the words.

09:25:47 17 Q. Because you're not an inventor on the patents, are you?

09:25:49 18 A. I was not an inventor on those patents.

09:25:51 19 Q. And if USAA wanted to bring an inventor here live to

09:25:56 20 testify, they could do that, right?

09:25:57 21 A. We're going to have videos, but, yes.

09:26:01 22 Q. Okay. We may see some video from some of these

09:26:05 23 inventors?

09:26:05 24 A. Yes.

09:26:06 25 Q. But there's -- there's, what, 10 inventors on these two

09:26:09 1 patents -- these two patents?

09:26:10 2 A. Yes, there are.

09:26:12 3 Q. And of those, how many of them still work at USAA?

09:26:16 4 A. I'm not sure I recall the number exactly. There's  
09:26:26 5 several people that have retired.

09:26:28 6 Q. Okay. All right.

09:26:30 7 MR. HILL: Your Honor, can I approach and hand the  
09:26:31 8 witness back this?

09:26:33 9 THE COURT: Yes, hand it back to him.

09:26:36 10 Q. (By Mr. Hill) Now, Mr. Brady, I want to look at some  
09:26:43 11 of those portions of the patents, as well.

09:26:45 12 MR. HILL: If we can go back to our display  
09:26:48 13 equipment, Ms. Lockhart. Thank you.

09:26:52 14 Q. (By Mr. Hill) Mr. Brady, in particular, I want to pull  
09:26:55 15 up the '605 patent and I want to look --

09:27:01 16 THE COURT: Is that a question, Mr. Hill?

09:27:02 17 MR. HILL: I'm sorry, Your Honor.

09:27:03 18 THE COURT: Don't tell him what you want to talk  
09:27:05 19 about. Ask him a question.

09:27:06 20 Q. (By Mr. Hill) Mr. Brady, can you take a look at  
09:27:08 21 Column 8 of the '605 patent for me, sir?

09:27:15 22 A. Yes, I can.

09:27:16 23 Q. And let's look specifically at Lines 3 through 17. Do  
09:27:23 24 you see that section of the patent, sir?

09:27:25 25 A. Yes, I do.

09:27:29 1 Q. And there we see in Column 8, Line 3 through 17, it  
09:27:34 2 says: Figure 4 provides a schematic diagram of an  
09:27:38 3 exemplary network or distributed computing environment, and  
09:27:41 4 it goes on to describe that.

09:27:46 5 And then it has reference down here further on to  
09:27:52 6 different devices such as PDAs, audio/video, MP3 players,  
09:27:58 7 personal computers, et cetera. Do you see that?

09:28:00 8 A. Yes, I do.

09:28:03 9 Q. Those are portions of the specification that you  
09:28:05 10 pointed to yesterday as a basis to say that this patent  
09:28:10 11 disclosed mobile devices, correct?

09:28:14 12 A. Yes.

09:28:16 13 Q. Mr. Brady, is it USAA's position, as USAA's corporate  
09:28:22 14 representative, that this material here is the inventive  
09:28:30 15 work that the USAA inventors came up with and wrote down?

09:28:36 16 A. That's my understanding, yes.

09:28:40 17 Q. And you believe this was then written down by the USAA  
09:28:44 18 inventors?

09:28:45 19 A. I think they were involved in the writing, yes.

09:28:55 20 MR. HILL: Your Honor, may we approach?

09:28:56 21 THE COURT: Approach the bench.

09:28:57 22 (Bench conference.)

09:29:10 23 MR. HILL: So, Your Honor, I approached because we  
09:29:14 24 have a motion in limine that deals with unasserted patents.  
09:29:18 25 What I plan to do here, what I just elicited from the

09:29:21 1 witness is USAA's position that its inventors wrote down  
09:29:26 2 this part of the spec, but its inventors created this part  
09:29:31 3 of the spec, is what they're pointing to for their written  
09:29:33 4 description defense.

09:29:34 5 Your Honor, this portion of the specification was  
09:29:36 6 not by USAA's inventors and goes to the credibility of USAA  
09:29:42 7 and its witness who's claiming their folks wrote this.

09:29:45 8 THE COURT: When you say "this," and when you say  
09:29:48 9 "this portion," you're talking about that list of --

09:29:48 10 MR. HILL: I'm talking --

09:29:51 11 THE COURT: -- devices that you've highlighted in  
09:29:53 12 yellow?

09:29:54 13 MR. HILL: Your Honor, I'm talking about that --  
09:29:56 14 I'm talking about this entire column of the patent is a cut  
09:30:02 15 and paste verbatim copy of old Microsoft patents, including  
09:30:07 16 figures, the whole shebang. And USAA has sponsored to this  
09:30:13 17 jury now that they wrote it, that their inventors created  
09:30:16 18 it and wrote it, and that's just not true. And it goes  
09:30:20 19 directly to the credibility of this witness.

09:30:23 20 And if USAA is -- he is their corporate  
09:30:26 21 representative, that they come to court and they tell the  
09:30:29 22 jury that the portion of the patent that supports our  
09:30:32 23 written description and that our inventors wrote to write  
09:30:37 24 down the invention, it's right here, and it's not -- it's a  
09:30:41 25 cut and paste copy of other things --

09:30:45 1                   THE COURT: And you're asking for leave to  
09:30:46 2 disclose those prior Microsoft patents?

09:30:48 3                   MR. HILL: Correct. They have nothing to do with  
09:30:51 4 prior art in this case. They're not even related to a  
09:30:53 5 banking system. It is simply to show contradiction.

09:30:58 6 Impeachment by contradiction is what I'm doing, Your Honor.

09:31:01 7 That's proper impeachment.

09:31:02 8                   THE COURT: What's your response, Mr. Sheasby?

09:31:04 9                   MR. SHEASBY: Your Honor, first, it's a violation  
09:31:06 10 of the motion in limines that have been granted by this  
09:31:09 11 Court.

09:31:10 12                   Second, it's actually not improper impeachment  
09:31:12 13 because he didn't say the inventors wrote the words. He  
09:31:15 14 said they participated in the preparation. And it's common  
09:31:19 15 practice -- and we know it's common practice for patents to  
09:31:22 16 be created in different ways through patent prosecutors.

09:31:26 17                   And so this does not show that it's not their  
09:31:28 18 invention. In fact, this is -- this -- this has no  
09:31:31 19 relevance whatsoever to the question of possession.

09:31:34 20 This -- this is not impeaching information. This is  
09:31:37 21 clearly going to confuse the jury. It's highly  
09:31:40 22 prejudicial. He did not say the inventors wrote those  
09:31:42 23 words. This is not proper.

09:31:44 24                   It's a violation of the motion in limine. And  
09:31:46 25 it's going -- now, we've already said that patent

09:31:50 1 prosecutors aren't coming, and the idea that we're now  
09:31:53 2 going to have to explain to the jury in some way that  
09:31:55 3 patent prosecutors craft applications in lots of different  
09:31:58 4 ways.

09:31:59 5 In fact, it's -- he -- they're going to be  
09:32:01 6 suggesting something that's the opposite. The fact that  
09:32:04 7 PDAs and these types of devices were ubiquitous is the  
09:32:08 8 reason why you have these types of sections in -- in the  
09:32:11 9 specification.

09:32:12 10 And so I don't believe this is proper impeachment.  
09:32:15 11 I think it's highly, highly prejudicial.

09:32:17 12 THE COURT: All right. I'm going to have to see  
09:32:19 13 what you're talking about.

09:32:20 14 MR. HILL: Yes, Your Honor.

09:32:21 15 THE COURT: I haven't seen it. And to do this in  
09:32:23 16 a way that I can clearly look at it --

09:32:25 17 MR. HILL: Yes, sir.

09:32:25 18 THE COURT: -- I'm going to send the jury out so  
09:32:28 19 that I don't have a small space up here at the bench where  
09:32:34 20 you're handing me documents.

09:32:35 21 MR. HILL: Okay.

09:32:36 22 THE COURT: All right. Go back to your respective  
09:32:37 23 places. Let me send the jury out.

09:32:39 24 (Bench conference concluded.)

09:32:40 25 THE COURT: Ladies and gentlemen, there's a matter

09:32:51 1 that's arisen that I need to take up with counsel outside  
09:32:55 2 of your presence. Consequently, I'm going to ask you to  
09:33:00 3 retire to the jury room and simply close and leave your  
09:33:03 4 notebooks in your chairs.

09:33:05 5 While you're in the jury room and outside of the  
09:33:07 6 courtroom, follow all my instructions, including not to  
09:33:09 7 discuss the case among yourselves. Use this opportunity to  
09:33:13 8 get a drink of water and stretch your legs while the rest  
09:33:16 9 of us are in here working on this issue.

09:33:18 10 With that, ladies and gentlemen, please retire to  
09:33:19 11 the jury room.

09:33:21 12 COURT SECURITY OFFICER: All rise.

09:33:22 13 (Jury out.)

09:33:51 14 THE COURT: All right. Be seated.

09:33:53 15 MR. HILL: Your Honor, may I make one other  
09:33:54 16 request? Since this concerns a matter of impeachment,  
09:33:58 17 can I ask the witness also be excluded from this  
09:34:01 18 conversation?

09:34:01 19 THE COURT: I think that's appropriate until the  
09:34:06 20 Court rules on this issue.

09:34:07 21 Mr. Brady, I'm going to ask you to step outside  
09:34:11 22 the courtroom. And if you'll stay close to those double  
09:34:13 23 doors in the back, we'll have the Court Security Officer  
09:34:16 24 come get you when it's the appropriate time for you to  
09:34:19 25 return.

09:34:37 1 THE WITNESS: Okay.

09:34:37 2 THE COURT: All right. The witness is outside the

09:34:39 3 courtroom.

09:34:39 4 Let's continue this discussion, counsel, where we

09:34:41 5 left off at the bench.

09:34:43 6 MR. HILL: Yes, sir, Your Honor.

09:34:44 7 THE COURT: You need to show me what you're

09:34:45 8 intending to use, Mr. Hill.

09:34:47 9 MR. HILL: Yes, sir. Let me gather it and hand it

09:34:50 10 to you.

09:34:50 11 MR. SHEASBY: And, Your Honor, if I may just

09:34:52 12 settle the record. The question that was answered was: I

09:34:55 13 think they were involved in the writing. Not that they

09:34:58 14 wrote the specification. So that's the question in which

09:35:00 15 he's seeking to show a patent that --

09:35:00 16 THE COURT: That's the answer the witness gave?

09:35:02 17 MR. SHEASBY: That's the answer the witness gave.

09:35:04 18 THE COURT: I understand.

09:35:22 19 MR. HILL: All right. Your Honor, if I may

09:35:23 20 approach?

09:35:24 21 THE COURT: Hand them to the courtroom deputy.

09:35:32 22 MR. HILL: Your Honor, I've handed you two

09:35:34 23 documents. One is a copy of the impeachment material.

09:35:36 24 This is the patent dated 2009.

09:35:42 25 THE COURT: The '943 patent?

09:35:45 1 MR. HILL: Yes, sir. And the other item I've  
09:35:47 2 handed you is a highlighted copy of the '605.  
09:35:49 3 THE COURT: All right.  
09:35:50 4 MR. HILL: Okay. And, Judge, if you will flip to  
09:35:52 5 Column 8.  
09:35:53 6 THE COURT: Of which patent?  
09:35:55 7 MR. HILL: Of the -- or, I'm sorry, Judge, let me  
09:35:58 8 find it here. If you will flip to Column 20 of the '943  
09:36:03 9 patent, and then you flip to Column 8 of the '605 patent,  
09:36:17 10 you will find a column and a half of identical material.  
09:36:26 11 And just for reference, Your Honor, the -- the  
09:36:31 12 '943 patent was filed in 2004, okay, so, well before the  
09:36:40 13 filing of the '605 patent.  
09:36:44 14 And if you take a look at them, Judge, they're  
09:36:47 15 verbatim. And if you also look in the figures to the '943  
09:36:52 16 patent --  
09:36:53 17 THE COURT: Let me ask a question, Mr. Hill, of  
09:36:56 18 Mr. Sheasby.  
09:36:56 19 Mr. Sheasby, do you agree that these two sections  
09:37:01 20 of these two different documents Mr. Hill's given me are  
09:37:06 21 identical?  
09:37:08 22 MR. SHEASBY: I haven't even looked all the way  
09:37:10 23 through, Your Honor.  
09:37:10 24 THE COURT: Well, now is the time for you to be  
09:37:12 25 looking. I'm looking, too.

09:37:16 1 MR. SHEASBY: So, Your Honor, the question of  
09:37:18 2 whether they're identical or not is not really the issue  
09:37:20 3 though.

09:37:20 4 THE COURT: Well, it's the question I asked you --

09:37:20 5 MR. SHEASBY: So --

09:37:22 6 THE COURT: -- and that's the question I'd like an  
09:37:25 7 answer to.

09:37:25 8 MR. SHEASBY: So -- so let's stipulate that  
09:37:27 9 they're identical.

09:37:28 10 THE COURT: All right. Then I want to hear the  
09:37:31 11 rest of Mr. Hill's statement.

09:37:32 12 MR. HILL: Your Honor, if you'll also look at  
09:37:34 13 Figure 2C of the '943 patent. It is Figure 4 from the '605  
09:37:48 14 patent. The only differences, Your Honor, are the actual  
09:37:56 15 numbering between the figures.

09:38:00 16 MR. SHEASBY: And so that is a relevant  
09:38:04 17 difference.

09:38:04 18 THE COURT: All right.

09:38:05 19 MR. HILL: But -- and the numbering then  
09:38:07 20 corresponds, of course, with the numbering that is in  
09:38:11 21 the -- in the respective portions of the specification.

09:38:14 22 MR. SHEASBY: But that's exactly my point, Your  
09:38:17 23 Honor.

09:38:17 24 THE COURT: Gentlemen, I'm going to hear from the  
09:38:18 25 Defendant first, and then I'm going to hear from the

09:38:21 1 Plaintiff. I don't want this back and forth over each  
09:38:23 2 other commentary.

09:38:25 3 Go ahead and finish your position, Mr. Hill.

09:38:28 4 MR. HILL: And so, Your Honor, what we've seen  
09:38:29 5 here is yesterday in his direct examination where Mr. Brady  
09:38:34 6 referred to this portion of the specification demonstrating  
09:38:37 7 what he said to the jury was their claimed invention and  
09:38:41 8 their PDA -- the question was asked: What is the PDA that  
09:38:46 9 was being discussed in the research program at USAA? And  
09:38:50 10 he went on to answer that, describing it.

09:38:55 11 And then today, I presented him with it again. I  
09:38:59 12 asked him if it was USAA's position that this portion of  
09:39:04 13 the specification represents their work that their  
09:39:06 14 inventors wrote to contribute to this patent in writing  
09:39:11 15 this patent. I don't have the exact question in front of  
09:39:12 16 me, Your Honor, from a live feed to read to you, but you  
09:39:15 17 heard the questioning. And he testified that it is.

09:39:19 18 They're claiming credit for this work. And that  
09:39:23 19 is relevant to show that USAA's credibility is questionable  
09:39:26 20 here. They have told the jury that these parts of the spec  
09:39:31 21 are things they wrote, things they prepared.

09:39:35 22 And the fact is that's not true. And the jury  
09:39:40 23 should be able to consider that in the context of assessing  
09:39:43 24 USAA's credibility by virtue of its corporate  
09:39:46 25 representative that has sponsored that testimony to them.

09:39:48 1 And I should be entitled to impeach him with this and show  
09:39:53 2 it to him.

09:39:53 3 THE COURT: All right. Now, I'll hear from you,  
09:39:56 4 Mr. Sheasby.

09:39:57 5 MR. SHEASBY: Thank you, Your Honor. I start with  
09:40:00 6 a couple of fixed points. There is no written description  
09:40:04 7 or derivation defense in this case -- there's no derivation  
09:40:07 8 defense in this case. It does not exist.

09:40:10 9 Second, Mr. Hill is not engaging in the testimony  
09:40:16 10 that I -- that was actually given, which is I think they  
09:40:19 11 were involved in the writing.

09:40:20 12 Third, what you see here is something that is  
09:40:23 13 actually common in patents, which is there's a section that  
09:40:26 14 talks about how you use digital devices. That section was  
09:40:31 15 used and renumbered and reconstructed so that it would work  
09:40:36 16 with the '605 patent to create that same structure.

09:40:39 17 There is not a case law in the Federal Circuit  
09:40:42 18 that says that you don't have possession of -- of an  
09:40:45 19 invention because you're using a passage from a  
09:40:48 20 specification that came from another patent.

09:40:50 21 In fact, that would suggest that prior art could  
09:40:54 22 destroy written description or could destroy possession,  
09:40:57 23 where it's just the opposite. The fact that PDAs were so  
09:41:02 24 ubiquitous, the fact that individuals used them, is  
09:41:06 25 evidence that it was a common understanding.

09:41:08 1 You're allowed to put in your specification things  
09:41:10 2 that are known in the art. And so my concern about it is  
09:41:13 3 I'm -- it's not lost on me exactly why Mr. Hill wants to do  
09:41:17 4 it. He didn't get the clean admission.

09:41:19 5 Mr. Brady has never seen this exhibit. If he's  
09:41:22 6 asked, have you seen this exhibit, he's going to say, I've  
09:41:25 7 never seen it before. So it's not proper impeachment on  
09:41:28 8 that ground. And it goes to something that is the exact  
09:41:30 9 opposite of the law.

09:41:31 10 There's this connection, which is they're trying  
09:41:34 11 to say that things were known in the art. So using PDAs in  
09:41:37 12 exchange of computers was known in the prior art. That's  
09:41:39 13 what this document shows, this Microsoft document.

09:41:43 14 That's not a challenge to written description.  
09:41:45 15 That's not a challenge to any defense in this case. What  
09:41:48 16 they're trying to do is tar USAA because a patent  
09:41:52 17 prosecutor did something which is allowed under the United  
09:41:55 18 States patent law, which is take portions of specifications  
09:41:58 19 and combine them together to create new inventions.

09:42:01 20 And the PTO concluded that this was a patentable  
09:42:04 21 invention in its totality without separating out individual  
09:42:08 22 elements.

09:42:08 23 The language is not identical. The numbering is  
09:42:11 24 different, and the numbering is different because it  
09:42:13 25 connects to different elements of the specification. It is

09:42:15 1 not proper impeachment.

09:42:17 2 And even if it were proper impeachment, it is not  
09:42:19 3 a disclosed defense in this case. There's no derivation in  
09:42:22 4 this case.

09:42:23 5 And the third issue is, if this happens, it blows  
09:42:28 6 open the door to an incredibly complicated explanation  
09:42:34 7 about the fact that there is nothing wrong with taking  
09:42:37 8 portions of a specification to construct another  
09:42:41 9 specification. It is absolutely -- there's no copyright in  
09:42:42 10 United States Government documents. You're entitled to do  
09:42:43 11 this, and it's lawful under the law to do this.

09:42:46 12 THE COURT: All right. Do you have anything else,  
09:42:47 13 Mr. Hill?

09:42:47 14 MR. HILL: I do, Your Honor.

09:42:49 15 THE COURT: Make it brief, please.

09:42:50 16 MR. HILL: Your Honor, the point -- what is  
09:42:52 17 unusual here -- it's not the fact that someone copies from  
09:42:55 18 an old patent. It's from the fact that a company corporate  
09:43:00 19 rep takes the stand and tells the jury that they're the  
09:43:03 20 genesis of this, that they authored it, that their -- their  
09:43:08 21 inventors created it, that it's their work.

09:43:10 22 And that's what this goes to, Judge. This isn't  
09:43:12 23 some grand patent issue. This is a basic issue of witness  
09:43:15 24 credibility and the fact that a witness who claims this is  
09:43:19 25 our work and it's not shouldn't be believed on other

09:43:24 1 matters.

09:43:24 2 And so that's what this demonstrates is that  
09:43:27 3 Mr. Brady has testified that this is the work of USAA, and  
09:43:33 4 it, in fact, is not. And that impairs his credibility.

09:43:37 5 Your Honor, I'll make one last thing. There's a  
09:43:40 6 case out that you may be aware of called the Cioffi case  
09:43:40 7 that Judge Payne had where he confronted something like  
09:43:47 8 this.

09:43:47 9 In that instance, Your Honor, the -- the Defendant  
09:43:50 10 was trying to use copied material like this that came from  
09:43:55 11 the background section of the patent. And Judge Payne said  
09:43:57 12 to him in the context of that case, well, it's not as if  
09:44:02 13 they're saying this is part of the invention. And he  
09:44:05 14 excluded it when it was background material.

09:44:08 15 Here, that's exactly what they've said. They've  
09:44:11 16 told the jury this is part of our invention, and they've  
09:44:14 17 gone beyond that to say in the context of a written  
09:44:17 18 description defense, and this is where our inventors wrote  
09:44:20 19 it down. I'm entitled to show they didn't write it and  
09:44:23 20 that their claims are incredible and it impairs their  
09:44:27 21 credibility. I don't want it for some broader patent  
09:44:30 22 issue. I want it for a credibility issue.

09:44:32 23 THE COURT: Go ahead, Mr. Sheasby.

09:44:34 24 MR. SHEASBY: Your Honor, this is absolutely  
09:44:35 25 improper. No one said we invented PDAs. We invented the

09:44:38 1 use of PDAs in a remote deposit capture system. This  
09:44:43 2 Microsoft document goes to not a single defense in this  
09:44:45 3 case, not one. This is absolutely improper impeachment,  
09:44:49 4 and it doesn't relate to any single defense in this case.  
09:44:51 5 It should not be -- it should not be allowed.

09:44:54 6 And, in addition, it's not even going to be  
09:44:56 7 impeachment because he's going to say I've never seen the  
09:44:58 8 document before.

09:45:00 9 THE COURT: All right. I've heard all I need to  
09:45:02 10 hear.

09:45:03 11 The Plaintiff's objection to this line of proposed  
09:45:11 12 impeachment is sustained. I don't find that there's a  
09:45:14 13 direct contradiction between what the witness testified to  
09:45:16 14 and what Mr. Hill is purporting to present.

09:45:21 15 I also find that it's very typical to reproduce  
09:45:25 16 sections of earlier patents. The question was not, did  
09:45:30 17 USAA originate this? Did they come up with it as -- as  
09:45:36 18 their original contribution? The question was, did those  
09:45:39 19 inventors write it?

09:45:40 20 And the witness said: To the best of my  
09:45:43 21 knowledge, they did. Well, they did write it. Whether it  
09:45:45 22 had been written before or not, was not the question.  
09:45:48 23 There's not a direct contradiction here. This is highly  
09:45:51 24 prejudicial, and it does not relate to the issue of written  
09:45:55 25 defense that the Defendants have put forward in this case.

09:45:58 1           Whether the description in the patent is an  
09:46:01 2 adequate description or not is not based upon whether the  
09:46:05 3 written word originated with the patentee or was reproduced  
09:46:13 4 from some earlier patent specification. That is not a part  
09:46:16 5 of the written defense. It's not probative. It's highly  
09:46:19 6 prejudicial. And I'm going to sustain the Plaintiff's  
09:46:21 7 objection.

09:46:21 8           MR. HILL: Your Honor, can I ask one question just  
09:46:23 9 to save us time once Mr. Brady is up there? If I were to  
09:46:27 10 elicit from Mr. Brady an affirmative response that USAA  
09:46:30 11 claims to have written -- to have authored this language,  
09:46:34 12 would that change the Court's view of this?

09:46:37 13           THE COURT: Given the lack of probative value and  
09:46:42 14 the high level of prejudice, it probably wouldn't, but I'm  
09:46:46 15 not going to preclude you from trying to ask that question,  
09:46:49 16 Mr. Hill.

09:46:49 17           MR. HILL: Thank you, Your Honor.

09:46:50 18           MR. SHEASBY: And, Your Honor, to be clear, I will  
09:46:53 19 instruct not to answer on that because it will reveal  
09:46:57 20 privilege of how we got --

09:46:57 21           THE COURT: So the question hasn't been asked yet,  
09:47:00 22 so if it is, you have a right to assert a privilege if  
09:47:00 23 you want to.

09:47:00 24           MR. HILL: Your Honor, I do not want to force the  
09:47:04 25 Plaintiff to assert a privilege in front of the jury.

09:47:06 1 That's unfair. So -- but I don't understand the privilege  
09:47:08 2 objection. My question would be does he contend that  
09:47:12 3 USAA's inventors actually authored this material.

09:47:16 4 MR. SHEASBY: Your Honor, he's already said he  
09:47:17 5 doesn't know. What he said is that they participated in  
09:47:20 6 the process.

09:47:20 7 THE COURT: Well, they wrote it, Mr. Hill, and the  
09:47:24 8 witness said, to the best of his knowledge, they wrote it.

09:47:27 9 But I can copy the first chapter of Genesis, and I  
09:47:31 10 wrote it, too, but that doesn't mean I originated it. And  
09:47:35 11 that's the distinction here.

09:47:36 12 You've put on nothing to show that the witness has  
09:47:38 13 indicated that USAA was the genesis of this and that they  
09:47:43 14 originated it. You're confusing origination and genesis  
09:47:48 15 with the act of writing it, and that's the distinction that  
09:47:52 16 the Court sees, and that's why it's not a direct  
09:47:54 17 contradiction.

09:47:55 18 But even if it were a direct contradiction, it's  
09:47:57 19 highly prejudicial with no real probative value that goes  
09:48:00 20 to your written -- written description defense. So on a  
09:48:06 21 403 basis, I believe the Plaintiff's objection is well  
09:48:09 22 taken.

09:48:09 23 MR. HILL: And that was the nature of my question,  
09:48:11 24 Your Honor. If I ask him the origination question, are you  
09:48:14 25 the genesis of this actual text --

09:48:16 1 THE COURT: And that's why I said I don't think it  
09:48:19 2 will change my ruling.

09:48:19 3 MR. HILL: Okay. Well then, I won't burn the  
09:48:20 4 Court's time to do it. That's why I wanted to ask.

09:48:21 5 THE COURT: Well, the time that's being burned is  
09:48:25 6 the parties' time, not the Court's time.

09:48:28 7 This issue is resolved as far as I'm concerned.

09:48:38 8 MR. SHEASBY: May I bring Mr. Brady back in?

09:48:41 9 THE COURT: Yes, you may bring the witness back in  
09:48:43 10 and put him back on the witness stand.

09:48:46 11 Mr. Hill, if you'll approach, I'll hand you back  
09:48:49 12 the documents.

09:48:49 13 MR. HILL: Yes, sir.

09:48:50 14 THE COURT: Ms. Lockhart?

09:48:51 15 Mr. Brady, if you'll return to the witness stand,  
09:48:54 16 please, sir.

09:49:04 17 Are you prepared to continue, Mr. Hill? Mr. Hill,  
09:49:08 18 are you prepared to continue?

09:49:09 19 MR. HILL: I am, Your Honor.

09:49:10 20 THE COURT: Then let's bring in the jury, please,  
09:49:12 21 Mr. Johnston.

09:49:53 22 COURT SECURITY OFFICER: All rise.

09:49:54 23 (Jury in.)

09:49:56 24 THE COURT: Thank you for your cooperation, ladies  
09:50:01 25 and gentlemen of the jury. Please be seated.

09:50:03 1 We will continue with the Defendant's  
09:50:06 2 cross-examination of the witness, Mr. Brady.  
09:50:09 3 Go ahead, counsel.  
09:50:10 4 MR. HILL: Thank you, Your Honor.  
09:50:12 5 Mr. Bakale, if we can go back to the '605 patent,  
09:50:15 6 please, and we were at Column 8.  
09:50:18 7 Q. (By Mr. Hill) Now, Mr. Brady, you were not involved in  
09:50:30 8 the writing of these portions of the specification, were  
09:50:32 9 you, sir?  
09:50:33 10 A. I was not involved.  
09:50:35 11 Q. But USAA has nine employees that remain in its employ  
09:50:40 12 today who were involved, right?  
09:50:49 13 A. I don't believe that number is right, no.  
09:50:53 14 Q. How many of these inventors still work for USAA?  
09:50:55 15 A. I see four.  
09:51:08 16 Q. And the face of the company that USAA brought to  
09:51:12 17 sponsor this invention was not any of those four but  
09:51:16 18 instead was you, correct?  
09:51:18 19 A. That's correct.  
09:51:20 20 Q. Now, Mr. Brady, the hundred million dollars in damages  
09:51:29 21 that USAA seeks in this case, that was just for the period  
09:51:33 22 of August 2018 until today, about a year and a half. Do  
09:51:37 23 you understand that?  
09:51:37 24 A. That's what I understand.  
09:51:41 25 Q. You understand that USAA is not claiming in this case

09:51:46 1 damages before the patents issued, right?

09:51:49 2 A. That's my understanding.

09:51:50 3 Q. Because you can't do that, can you?

09:51:51 4 A. That's my understanding, yes.

09:51:52 5 Q. You can only seek damages for a patent once it exists.

09:51:56 6 Seem right?

09:51:58 7 A. Okay. Yes.

09:51:58 8 Q. And -- but USAA isn't seeking damages just for that

09:52:03 9 period, is it?

09:52:03 10 A. I don't know all the details.

09:52:07 11 Q. All right. What I'm asking, Mr. Brady, is, is USAA

09:52:12 12 trying to be bashful about the amount of money it's really

09:52:16 13 asking for or that it really says these inventions are

09:52:19 14 worth?

09:52:19 15 A. I'm not -- I'm not sure what you're getting at, sir.

09:52:22 16 Q. These patents don't expire today, do they?

09:52:25 17 A. No.

09:52:26 18 Q. When do they expire?

09:52:28 19 A. My understanding is 20 years --

09:52:35 20 Q. Okay.

09:52:36 21 A. -- from issue.

09:52:37 22 Q. So what is USAA saying Wells Fargo should really pay

09:52:40 23 for the use of mobile check deposit?

09:52:43 24 A. You know, I'm probably not the best one to -- to speak

09:52:47 25 to that. I think we have other people that will be

09:52:49 1 representing that.

09:52:49 2 Q. Mr. Brady, there are no licenses to these patents, are  
09:52:58 3 there, sir?

09:52:59 4 A. What do you -- what do you mean by that?

09:53:04 5 Q. Just that, there are no licenses to these patents, are  
09:53:07 6 there, sir?

09:53:08 7 A. I'm not aware.

09:53:11 8 MR. HILL: I'll pass the witness, Your Honor.

09:53:12 9 THE COURT: Redirect examination by the Plaintiff?

09:53:20 10 Counsel, are either of you going to continue to  
09:53:22 11 use this easel during this witness's examination?

09:53:25 12 MR. HILL: No, sir, Your Honor.

09:53:26 13 THE COURT: Then I'd suggest somebody move it back  
09:53:28 14 so it doesn't obstruct my view of the podium. Thank you.

09:53:36 15 MR. SHEASBY: Your Honor, may I approach counsel?

09:53:38 16 Counsel has inadvertently taken my notepad.

09:53:41 17 THE COURT: You may have a moment to talk to  
09:53:43 18 opposing counsel.

09:53:44 19 MR. HILL: I'm sorry. Sorry.

09:54:08 20 THE COURT: All right. Mr. Sheasby, you may  
09:54:09 21 proceed with your redirect examination.

09:54:09 22 REDIRECT EXAMINATION

09:54:12 23 BY MR. SHEASBY:

09:54:12 24 Q. Good morning, Mr. Brady.

09:54:14 25 A. Good morning, Mr. Sheasby.

09:54:15 1 Q. It's nice to speak with you again.

09:54:17 2 A. It's nice to speak with you.

09:54:18 3 Q. Mr. Brady, do you have an understanding as to why you

09:54:21 4 were asked to speak on behalf of USAA about consumer remote

09:54:25 5 deposit capture?

09:54:25 6 A. Yes, I do.

09:54:26 7 Q. Why is that?

09:54:28 8 A. I was -- I was -- when we first implemented consumer

09:54:36 9 remote deposit capture, I was the technology leader that

09:54:39 10 was the technical sponsor, and I led the team on a

09:54:44 11 day-to-day -- day-by-day basis as we were rolling out the

09:54:48 12 initial implementation.

09:54:51 13 MR. SHEASBY: Mr. Huynh, can we turn to PX-1186,

09:54:59 14 which is the '605 patent. And if you could pull up

09:55:01 15 Claim 1, Mr. Huynh. And just pull up the talk about -- top

09:55:19 16 of that, Claim 1. Right there, that's good enough.

09:55:22 17 Q. (By Mr. Sheasby) Now, counsel for Wells Fargo asked

09:55:27 18 you questions about whether Mr. Morris had said that mobile

09:55:34 19 phones appear in the patents. Do you remember those

09:55:38 20 questions?

09:55:38 21 A. Yes, he did ask that.

09:55:40 22 Q. Do the claims that the United States Government granted

09:55:45 23 to USAA require the use of a mobile phone?

09:55:50 24 MR. HILL: Objection, Your Honor. Calls for a

09:55:51 25 legal opinion.

09:55:55 1 MR. SHEASBY: Your Honor, he's opened the door to  
09:55:56 2 this by asking Mr. Brady whether the patent references  
09:56:01 3 mobile phones.

09:56:01 4 MR. HILL: Your Honor, I can't open the door to a  
09:56:03 5 non-opinion witness giving opinions.

09:56:07 6 MR. SHEASBY: Your Honor, if the question -- the  
09:56:09 7 claims do not require mobile phones, the examination that  
09:56:12 8 was done by Mr. Brady representing that whether mobile  
09:56:16 9 phone does or does not appear in the patents goes directly  
09:56:19 10 to the question of whether the claims require a mobile  
09:56:21 11 phone, which they don't.

09:56:22 12 THE COURT: Restate your question, Mr. Sheasby.

09:56:24 13 Q. (By Mr. Sheasby) Mr. Brady, you've examined the claims  
09:56:30 14 of the patents, correct?

09:56:31 15 A. Yes, I have.

09:56:33 16 Q. In your examination of the claims of the patents, do  
09:56:36 17 they require -- did you see any reference to a mobile  
09:56:39 18 phone?

09:56:39 19 A. I think they describe the concepts of a mobile phone.

09:56:45 20 Q. Do they describe the -- do the patents describe the  
09:56:49 21 concepts of a portable device?

09:56:50 22 A. They describe the concept of a portable device. They  
09:56:54 23 describe the concepts of a digital camera. I think they  
09:56:58 24 describe all the concepts of a mobile phone.

09:57:00 25 Q. Do the patents make reference to the use of cellular

09:57:04 1 technology?

09:57:04 2 A. Yes, they also make reference to cellular technology in  
09:57:10 3 the -- in the patents.

09:57:10 4 Q. Now, Mr. Hill suggested to you that the -- well, let's  
09:57:21 5 withdraw the --

09:57:22 6 MR. SHEASBY: Let's go to PX-1186, and let's pull  
09:57:24 7 up Column 21 -- I mean, Page 21 of that, Mr. Huynh. And  
09:57:36 8 let's go to Column 4, Lines 1 through 9.

09:57:40 9 Q. (By Mr. Sheasby) Now, this is a passage from the  
09:57:49 10 formal specification of the '605 patent, correct?

09:57:52 11 A. That's correct, yes.

09:57:53 12 Q. Do you have an understanding as to whether this same  
09:57:57 13 passage appears in the '681 patent?

09:57:58 14 A. I believe it does.

09:58:00 15 Q. Okay. And this is the passage that was written by USAA  
09:58:05 16 in 2006; is that correct?

09:58:07 17 A. Yes, it's the same.

09:58:09 18 MR. SHEASBY: And I want to highlight the last  
09:58:12 19 sentence, Mr. Huynh, if you would.

09:58:14 20 Q. (By Mr. Sheasby) It said a particular advantage of the  
09:58:19 21 embodiments of the invention is its ability to operate in  
09:58:22 22 conjunction with electronics that today's consumers  
09:58:25 23 actually own or can easily acquire, such as a general  
09:58:30 24 purpose computer, a scanner, and a digital camera.

09:58:41 25 Did USAA have a view as to the -- withdraw the

09:58:46 1 question.

09:58:46 2 Let me ask it this way: What was USAA's views of  
09:58:51 3 the type of devices its members would use with  
09:58:55 4 the platform it created in 2006?

09:58:56 5 A. We wanted to be able to use everyday consumer devices  
09:58:59 6 that they either already had or that they could easily go  
09:59:03 7 out and acquire and that was -- we wanted to be able to  
09:59:07 8 enable devices that they, you know, could use for other  
09:59:10 9 things, as well.

09:59:12 10 And -- and these are -- this is a very descriptive  
09:59:16 11 of -- of the type of devices that we were -- that we were  
09:59:19 12 looking for.

09:59:20 13 Q. The platform that USAA created in 2006, could it accept  
09:59:25 14 digital images from mobile phone cameras?

09:59:27 15 A. Yes, the infrastructure we developed definitely was --  
09:59:30 16 was able to accept those -- those digital images.

09:59:34 17 Q. The infrastructure that USAA created in 2006, did it  
09:59:40 18 have the ability to accept images from PDAs?

09:59:46 19 A. Yes, it did.

09:59:48 20 Q. Did it have the ability to accept images from webcams?

09:59:53 21 A. Yes, it did.

09:59:54 22 Q. Is there any digital camera that the system in 2006  
10:00:00 23 could not have accepted an image from that you're aware of?

10:00:03 24 A. As long as the digital camera had a high enough pixel  
10:00:08 25 quality, high enough resolution, it would -- it could

10:00:11 1 accept the image, yes.

10:00:13 2 Q. When was USAA experimenting with capturing images using  
10:00:19 3 mobile phones?

10:00:20 4 A. We officially began a project in 2007 to start working  
10:00:24 5 with -- with mobile phones.

10:00:26 6 Q. And why did you -- why were you inspired to begin a  
10:00:30 7 formal project in 2007?

10:00:31 8 A. We knew mobile phones had digital cameras. We knew  
10:00:36 9 mobile phones were being used as cameras. And so we -- we  
10:00:40 10 specifically wanted to enable that for our members.

10:00:43 11 Q. Now, Mr. Hill suggested to you that an engineer from  
10:00:50 12 USAA had expressed concern about whether digital cameras  
10:00:55 13 should be used and whether -- and that it had never been  
10:00:59 14 experimented with before.

10:01:00 15 And you correct him and say: That was an  
10:01:04 16 executive. Can you talk about Rickey Burks as an executive  
10:01:08 17 and what -- what exactly his concern was?

10:01:10 18 A. So Mr. Burks -- let me --

10:01:21 19 Q. I believe it's PX-36, Mr. Brady.

10:01:21 20 A. As I mentioned, Mr. Burks was my manager. Mr. Burks  
10:01:36 21 was also Mr. Oakes's manager. And his -- his -- and -- and  
10:01:46 22 Mr. Oakes is the one that's actually named on the patent,  
10:01:49 23 by the way.

10:01:50 24 But what Mr. Burks's concern was at the time we  
10:01:55 25 had been working with -- it was important for us to do

10:02:02 1 virus scans on the images that were coming back from --  
10:02:06 2 from our -- our members' devices. And so we -- we had --  
10:02:15 3 we knew we had fully tested out all of our scanning for  
10:02:20 4 the -- for the -- for the scanners.

10:02:25 5 Mr. Burks's concern here is have we done all the  
10:02:33 6 virus scanning that we needed for the -- for the -- for  
10:02:37 7 digital cameras. And -- and I remember that because this  
10:02:39 8 was a specific concern of Mr. Burks's.

10:02:42 9 Q. Was Mr. Burks expressing questions as to whether Wells  
10:02:45 10 Fargo -- USAA's system was technically capable?

10:02:45 11 A. He was not expressing that concern.

10:02:48 12 MR. SHEASBY: All right. Let's scroll up in this  
10:02:49 13 email to the part that discussed Troy -- Troy Huth. I we  
10:02:54 14 could go -- I believe it's between 2 and 3, Mr. Huynh.

10:02:58 15 Q. (By Mr. Sheasby) So just the -- to orient ourselves,  
10:03:08 16 this is before the filing in the patent application,  
10:03:10 17 correct?

10:03:10 18 A. Yes, it is.

10:03:11 19 Q. And it says, quote, Mike Morris did check on the use of  
10:03:15 20 a camera to capture the image is included in our patent  
10:03:17 21 application.

10:03:18 22 Do you see that, sir?

10:03:19 23 A. Yes, absolutely.

10:03:20 24 Q. Now, you said that you began a formal project with  
10:03:24 25 mobile phones in 2007, correct?

10:03:27 1 A. Yes, we kicked off a formal project in 2007 to start  
10:03:31 2 working with mobile phones.

10:03:32 3 Q. What platform was used for that formal project?

10:03:35 4 A. It was the same underlying platform that -- that our --  
10:03:41 5 all of our other consumer remote deposit capture was based  
10:03:44 6 on.

10:03:44 7 Q. And was that platform in existence in 2006?

10:03:47 8 A. That was in existence in 2006.

10:03:49 9 Q. Now, you were involved in a number of research and  
10:03:52 10 development programs at USAA, correct?

10:03:54 11 A. Correct.

10:03:55 12 Q. And you're responsible for preparing and ensuring that  
10:03:58 13 patents are sometimes prepared on inventions, correct?

10:04:00 14 A. That's -- that's correct, yeah. That's part of my --  
10:04:03 15 my job.

10:04:03 16 Q. In your experience, what comes first, the creation of  
10:04:07 17 the commercial platform or the filing of the patent  
10:04:11 18 application?

10:04:11 19 A. The -- the -- what would come first would be the idea  
10:04:16 20 and the filing of the patent.

10:04:16 21 Q. And so in your experience as a research and development  
10:04:19 22 executive, not just your 15 years at USAA, but your 35  
10:04:23 23 years in the industry, first, you file the patent; is that  
10:04:28 24 correct?

10:04:28 25 A. That's correct.

10:04:29 1 Q. And then you build out the infrastructure to launch it  
10:04:32 2 to consumers; is that correct?

10:04:33 3 A. That's the way we generally do things, yes.

10:04:35 4 Q. Are you aware of any company in this field or any  
10:04:40 5 technology company that first creates the system and then  
10:04:44 6 writes the patent?

10:04:45 7 A. I'm not aware of that, no.

10:04:47 8 Q. Now, let's turn back to PX-39. And let's look at the  
10:05:08 9 top email exchange. I'm going to go to the passage from  
10:05:16 10 Mr. Oakes that says: This effort can and will  
10:05:20 11 revolutionize the banking industry...the virtual bank.

10:05:24 12 Do you see that?

10:05:25 13 A. Yes, I do. That's calling out the vision around what  
10:05:28 14 we wanted to accomplish.

10:05:28 15 Q. And this is from 2006; is that correct?

10:05:30 16 A. Yes. This is before -- before we actually launched.

10:05:33 17 Q. In that platform that was created in 2006, the platform  
10:05:37 18 for the virtual bank, is that the same platform that was  
10:05:41 19 the -- was -- was the foundation for the iPad app launch in  
10:05:47 20 2009?

10:05:47 21 A. Yes, it was the same -- same platform we used for --  
10:05:52 22 for iPhone, Android, iPad, Windows Mobile, everything. It  
10:05:57 23 was all based on the same platform.

10:05:59 24 Q. It improved over time, but it was the same core  
10:06:02 25 platform?

10:06:02 1 A. Yes, yes.

10:06:03 2 Q. And that platform existed in 2006, correct?

10:06:05 3 A. Yes, it did.

10:06:06 4 Q. And I want to go down, and I want you to just read the

10:06:10 5 last passage that says: We have been told this product

10:06:13 6 will not work. And ask you a question of: What was the

10:06:19 7 industry's views of -- in your experience of the technology

10:06:22 8 when it was launched in 2006 and 2007?

10:06:24 9 A. The -- the industry view? Well, this -- this had never

10:06:31 10 been done before. Even we -- internally, we all thought

10:06:35 11 this was -- this was not doable because it had never been

10:06:40 12 done before. It seems pretty commonplace now, but back

10:06:43 13 then, it had never been done before.

10:06:45 14 And so we -- we had a lot of discussion about is

10:06:47 15 it even -- is it even going to be possible? Is it going to

10:06:50 16 be -- you know, are we going to be able to work with the

10:06:54 17 regulators, which we did, to ensure that it -- that it met

10:06:57 18 the regulations?

10:06:58 19 Q. Were you familiar with the types of devices that were

10:07:03 20 being used to capture images in 2006 in the research

10:07:09 21 laboratories at USAA?

10:07:10 22 A. There were quite a number of them, yes.

10:07:12 23 Q. Give me some examples.

10:07:14 24 A. In 2006, in our -- in our Applied Research area.

10:07:16 25 Q. Yes, not in a program but just experimenting in the

10:07:19 1 lab.

10:07:19 2 A. Yeah, we -- we -- this is outside of an official  
10:07:21 3 project, but we did have a lot of devices down in our  
10:07:24 4 Applied Research lab. We had a variety of different  
10:07:27 5 scanners. We also had -- had webcams. We were -- we  
10:07:33 6 were -- we were working -- we were taking pictures of  
10:07:38 7 checks using -- using -- using mobile phones to see if the  
10:07:41 8 quality was good enough. But it wasn't until 2007 that we  
10:07:43 9 officially kicked off that project.

10:07:45 10 Q. And turning back to PX-36 -- actually, I withdraw that.

10:07:58 11 Mr. Brady, what has been the impact of consumer  
10:08:02 12 remote deposit capture on USAA as a company?

10:08:04 13 A. It -- it -- it has been -- it's been very -- I mean,  
10:08:09 14 it's been huge. It's been -- you know, I think I mentioned  
10:08:13 15 yesterday, our -- our company has grown. The bank has  
10:08:17 16 tripled in size since we did this. As soon as we  
10:08:20 17 implemented it, we saw a -- a huge bump in the number of  
10:08:24 18 checking accounts, a huge increase in the number of  
10:08:26 19 checking accounts because it attracted more -- more members  
10:08:30 20 to use us for banking services. And it -- it's been  
10:08:34 21 tremendous for us.

10:08:34 22 Q. And to this day presently, are you aware of any mobile  
10:08:41 23 device that can download an application, has a digital  
10:08:44 24 camera, that cannot be used with USAA's platform?

10:08:47 25 A. No. They all work at this point.

10:08:49 1 Q. And that's based on the research in 2006?

10:08:51 2 A. That's based on what we did in 2006 and what we built

10:08:54 3 in 2006.

10:08:55 4 MR. SHEASBY: No further questions. I pass the

10:08:57 5 witness.

10:08:57 6 THE COURT: Further cross-examination?

10:08:59 7 MR. HILL: Briefly, Your Honor.

10:09:07 8 THE COURT: Please proceed.

10:09:07 9 RECROSS-EXAMINATION

10:09:07 10 BY MR. HILL:

10:09:08 11 Q. Mr. Brady, for that 2006 system that's discussed in

10:09:11 12 that email we've looked at so often, you had to have a

10:09:14 13 TWAIN driver, didn't you?

10:09:16 14 A. That was the implementation. That was -- that's an

10:09:21 15 example of what we were doing. That's an example of an

10:09:24 16 implementation, yes.

10:09:25 17 Q. Mobile phones don't typically have TWAIN drivers, do

10:09:29 18 they, sir?

10:09:31 19 A. I'm not aware if they do.

10:09:32 20 Q. Are you familiar at all with homebuilding, Mr. Brady?

10:09:35 21 A. Somewhat.

10:09:37 22 Q. Okay. Well, you understand -- let me ask -- before I

10:09:39 23 get to that, you understand the question in this case is

10:09:41 24 whether the spec supports the claims, right?

10:09:43 25 A. I understand.

10:09:47 1 Q. All right. You know, you can build a house with  
10:09:50 2 different kinds of foundations. Have you ever heard of a  
10:09:52 3 pier and beam foundation?

10:09:54 4 A. Yes.

10:09:54 5 Q. If I -- and effectively, a pier and beam foundation is  
10:09:57 6 what, it's a platform, isn't it?

10:10:00 7 A. You could call it multiple things.

10:10:03 8 Q. And if I write you out a description of how to build a  
10:10:06 9 pier and beam foundation, I haven't told you how to build  
10:10:10 10 the house, have I?

10:10:11 11 A. I think it's the -- I think it's the foundation for it.

10:10:18 12 MR. HILL: Pass the witness, Your Honor.

10:10:20 13 THE COURT: Any redirect?

10:10:22 14 MR. SHEASBY: No redirect, Your Honor.

10:10:23 15 THE COURT: Mr. Brady, you may step down and then  
10:10:26 16 return to counsel table.

10:10:28 17 THE WITNESS: Yes, sir.

10:10:28 18 THE COURT: Counsel, approach the bench, please.

10:10:32 19 (Bench conference.)

10:10:42 20 THE COURT: Oakes by deposition is next?

10:10:48 21 MR. SHEASBY: Yes, Your Honor.

10:10:49 22 THE COURT: And what's the length of this  
10:10:51 23 deposition?

10:10:51 24 MR. SHEASBY: I think it's 16 or 17 minutes,  
10:10:53 25 Your Honor.

10:10:53 1 THE COURT: Total?

10:10:54 2 MR. SHEASBY: Yes.

10:10:55 3 THE COURT: Okay. Let's proceed with that.

10:10:56 4 (Bench conference concluded.)

10:11:06 5 MR. SHEASBY: Your Honor, Plaintiffs call as their

10:11:08 6 next witness Mr. Charles Oakes, one of the inventors, by

10:11:12 7 deposition.

10:11:16 8 THE COURT: All right.

10:11:28 9 MR. HILL: Your Honor, may we -- before that

10:11:30 10 starts, approach briefly. I apologize.

10:11:37 11 THE COURT: Approach the bench.

10:11:38 12 (Bench conference.)

10:11:40 13 MR. HILL: Your Honor, I believe there was an

10:11:41 14 instruction --

10:11:42 15 THE COURT: I have the instruction. I'm about to

10:11:44 16 give it.

10:11:44 17 MR. HILL: Oh, I'm sorry. I didn't -- I thought

10:11:47 18 we were starting the video.

10:11:48 19 THE COURT: Okay.

10:11:49 20 (Bench conference concluded.)

10:11:49 21 THE COURT: All right. Mr. Oakes has been called

10:11:52 22 by deposition to testify in this case.

10:11:53 23 Ladies and gentlemen, during the trial you're

10:11:56 24 going to see witnesses presented by video deposition. I

10:12:00 25 talked with you about that in my original instructions.

10:12:03 1 I want you to be aware that when a witness is  
10:12:06 2 presented by deposition, both Plaintiff and Defendant have  
10:12:10 3 an opportunity to pick and choose portions of the recorded  
10:12:15 4 questions and answers to include in what's shown to the  
10:12:19 5 jury.

10:12:19 6 So regardless of whether the testimony is played  
10:12:22 7 by the Plaintiffs in the Plaintiff's case-in-chief or by  
10:12:25 8 the Defendant in the Defendant's case-in-chief, both the  
10:12:29 9 Plaintiff and the Defendant have had an opportunity to  
10:12:32 10 select portions of the testimony that you're being shown as  
10:12:36 11 a part of this witness by video deposition. I just want  
10:12:38 12 that to be clear in your minds.

10:12:40 13 All right. With that instruction, let's proceed  
10:12:42 14 with the witness by deposition.

10:12:48 15 (Videoclip played.)

10:12:48 16 QUESTION: Will you please state your name for the  
10:12:50 17 record?

10:12:50 18 ANSWER: Charles Oakes.

10:12:51 19 QUESTION: And USAA is your current employer,  
10:12:54 20 correct?

10:12:54 21 ANSWER: No, I'm retired from USAA.

10:12:55 22 QUESTION: When did you retire, sir?

10:12:58 23 ANSWER: April 1st, 2016. It's been over three  
10:13:02 24 years.

10:13:03 25 QUESTION: And what have you been doing in your

10:13:05 1 retirement?

10:13:06 2 ANSWER: Playing golf, teaching golf. I teach  
10:13:09 3 junior golf at my church, doing ministry work with my  
10:13:12 4 church. Doing a lot of reading and gardening and enjoying  
10:13:16 5 retirement life.

10:13:21 6 QUESTION: Prior to retiring on April 1st, 2016,  
10:13:24 7 were you employed at USAA?

10:13:26 8 ANSWER: Yes, I was.

10:13:26 9 QUESTION: And how long prior to your retirement  
10:13:29 10 had you been employed with USAA?

10:13:31 11 ANSWER: I had been employed with USAA for 15  
10:13:34 12 years.

10:13:34 13 QUESTION: So from approximately 2001 to 2016?

10:13:38 14 ANSWER: That's correct.

10:13:38 15 QUESTION: When you were first named director of  
10:13:43 16 Applied Research team again, you've spoken about the fact  
10:13:46 17 that it was more of a paper-based research effort, correct?

10:13:49 18 ANSWER: That is correct. It was a paper-based  
10:13:52 19 analysis of industry, when we would get a request from --  
10:13:55 20 could be from the business, it could be from a technical,  
10:13:58 21 to go evaluate this particular area to see the maturity of  
10:14:03 22 it or not.

10:14:03 23 QUESTION: So someone at USAA would have an  
10:14:06 24 interest in -- in some area of the industry, correct, and  
10:14:10 25 they'd come to you and your team and say, will you guys

10:14:13 1 look into this? Is that a fair characterization?

10:14:17 2 ANSWER: That is -- was one of the processes

10:14:19 3 associated with it. We would get requests and then we

10:14:23 4 would take a look at it, did it fit, should we do it. We

10:14:27 5 would have to do kind of a cost analysis, how long would it

10:14:31 6 take. And then the result of that would end up being a

10:14:34 7 white paper analysis.

10:14:34 8 QUESTION: Would you look at what the competitors

10:14:37 9 in the industry were doing?

10:14:38 10 ANSWER: That wasn't our -- that wasn't our

10:14:40 11 mission, but in the analysis of the industry, we would take

10:14:42 12 a look at who were the leaders in the industry because

10:14:45 13 usually -- what I would call a sponsor, the sponsor that

10:14:49 14 requested it would ask who are the leaders in this industry

10:14:52 15 and what is the maturity of the industry.

10:14:55 16 QUESTION: So part of your research would include

10:14:57 17 looking to see what companies that were out there in that

10:15:00 18 space and analyzing what they were doing, correct?

10:15:05 19 ANSWER: We would take a look at as far as what

10:15:12 20 was out there in the industry and what their maturity

10:15:13 21 were -- associated with whatever aspect we were asked to

10:15:16 22 look at.

10:15:17 23 QUESTION: And you were a named inventor on some

10:15:19 24 of those patents, correct?

10:15:22 25 ANSWER: Correct.

10:15:22 1                   QUESTION: What was the work USAA was doing on  
10:15:25 2 remote deposit capture in 2006?

10:15:26 3                   ANSWER: In 2006? Really, we were developing an  
10:15:31 4 application to be able to do remote capture of checks using  
10:15:37 5 the scanner, which really started back in early -- or late  
10:15:42 6 2004, early 2005.

10:15:49 7                   That was the essence, as far as what we were  
10:15:51 8 doing, to be able to use a consumer-based type of device,  
10:15:56 9 to be able to capture an image of a check, to be able to  
10:16:00 10 take that check and to do whatever work was necessary,  
10:16:06 11 image type of correction, to try to make sure that that  
10:16:09 12 check was going to be able to be deposited through the  
10:16:13 13 clearing house process and the item processing.

10:16:16 14                   QUESTION: And did that product eventually have a  
10:16:19 15 name?

10:16:19 16                   ANSWER: It was called Deposit@Home.

10:16:20 17                   QUESTION: Back in 2006, the primary thing that  
10:16:25 18 you were working on related to Deposit@Home was to allow  
10:16:31 19 consumers to use flatbed scanners, correct?

10:16:35 20                   ANSWER: At that point in time, our -- our focus  
10:16:38 21 was to be able to get a scanner to be used to be able to  
10:16:43 22 get an image of a check to be able to deposit it.

10:16:45 23                   QUESTION: Thank you. Do you recall when the  
10:17:10 24 prototype for Deposit@Home using a flatbed scanner was  
10:17:16 25 built?

10:17:17 1                   ANSWER: Well, again, we're going back -- it  
10:17:23 2 was -- it was launched in 2006, so prior to that was around  
10:17:28 3 the late 2005 time frame.

10:17:36 4                   QUESTION: Do you know when USAA and your team  
10:17:39 5 started working on Deposit@Home?

10:17:42 6                   ANSWER: We really started back in late 2004, 2005  
10:17:48 7 time period.

10:17:49 8                   QUESTION: I'll hand you what we'll mark as  
10:17:52 9 Exhibit 1 to your deposition, sir. You see this is an  
10:18:05 10 email dated September 15th, 2005?

10:18:09 11                  ANSWER: Okay.

10:18:34 12                  QUESTION: Do you see this is an email dated  
10:18:36 13 September 15th, 2005?

10:18:38 14                  ANSWER: Correct.

10:18:38 15                  QUESTION: Does this refresh your recollection  
10:18:41 16 about the time frame that USAA was building its prototype  
10:18:43 17 for Deposit@Home?

10:18:44 18                  ANSWER: Yes, it does. But there's -- if I could  
10:18:49 19 explain when -- the definition of prototype as far as from  
10:18:52 20 a research standpoint. The Deposit@Home was divided into  
10:18:58 21 three major sections associated -- of the entire  
10:19:01 22 application. The front end was the scanner.

10:19:08 23                  So we had to be able to test it or prototype,  
10:19:14 24 using the scanner to take control, and to be able to see  
10:19:17 25 what kind of complexity that we're going to have and be

10:19:21 1 able to grabbing the image. So that -- that's the front  
10:19:24 2 end.

10:19:25 3 The middle part was what I would call the server  
10:19:29 4 side. So whatever image, because the intelligence wasn't  
10:19:33 5 there in the scanner, would go to the server side to be  
10:19:35 6 able to clean up the image, ensure -- even though it's a  
10:19:40 7 semicontrolled environment, to make sure that that image  
10:19:44 8 was where the CAR read or the amounts or the MICR line was  
10:19:51 9 all there. So that was mid-tier.

10:19:53 10 Then what we called a back end item processing,  
10:19:56 11 that was already there. Okay. So what we needed to do was  
10:20:01 12 to determine how to control the scanner to get the image,  
10:20:03 13 what do we do in the middle part to be able to clean up the  
10:20:06 14 image, and then hook into the back end system. This here  
10:20:13 15 is what they're talking about hooking into the back end  
10:20:16 16 system, and so --

10:20:17 17 QUESTION: Just so we're clear, in the 2005/2006  
10:20:21 18 time frame when USAA was developing Deposit@Home, the back  
10:20:23 19 end item processing systems were already in place, correct?

10:20:27 20 ANSWER: That is a standard banking operation.

10:20:30 21 QUESTION: Did you mean a standard banking  
10:20:39 22 operation?

10:20:40 23 ANSWER: Yes, in other words, for check clearing  
10:20:41 24 item processing, it goes -- what did I say?

10:20:42 25 QUESTION: I think you said "baking."

10:20:44 1 ANSWER: That's my South Texas accent. My  
10:20:46 2 apologies.

10:20:46 3 QUESTION: Completely understand.

10:20:48 4 ANSWER: That was the -- that's been there  
10:20:52 5 probably through the '60s and '70s. It's what they call  
10:20:54 6 the item processing that goes through the back end  
10:20:58 7 clearing. So that was there. We didn't -- we didn't need  
10:21:00 8 to develop that.

10:21:01 9 QUESTION: Perfect. So --

10:21:03 10 ANSWER: We just needed to hook in.

10:21:05 11 QUESTION: Perfect. So in terms of your  
10:21:07 12 development in 2005 and 2006 of Deposit@Home, you didn't  
10:21:10 13 need to develop any new back end item processing systems,  
10:21:13 14 those were already in place, correct?

10:21:14 15 ANSWER: Those were in place, but what we had to  
10:21:16 16 ensure is what we did on the front -- front end would be  
10:21:19 17 accepted by the item processing because if it didn't, then  
10:21:24 18 it would not clear through Chase and through the fed and  
10:21:28 19 all that. So that was -- we didn't want to redo that.  
10:21:34 20 There was no sense rebuilding that.

10:21:36 21 QUESTION: So at this point on October 27th or  
10:21:40 22 around October 27th, 2005, you and your team felt the  
10:21:44 23 development of the Deposit@Home was far enough along that  
10:21:49 24 it should be shown to someone outside your team, correct?

10:21:53 25 ANSWER: We felt at that point in time because of

10:21:56 1 John Brady's expertise in the banking industry, that if --  
10:21:59 2 if we showed it to him of what we were able to accomplish  
10:22:03 3 at that point in time and get his feedback of whether he  
10:22:06 4 believed, from a banking standpoint -- because he was our  
10:22:10 5 expert in that area.

10:22:12 6 If he basically said, hey, I think you've got  
10:22:14 7 something here, here are some of the suggested changes,  
10:22:19 8 then we would continue to go forward. If he would have  
10:22:23 9 come back and said, guys, this is not going to work, it's  
10:22:26 10 not going to fly, we're not going to go anywhere  
10:22:30 11 whatsoever, I don't give my recommendation in going  
10:22:32 12 forward, we probably would have stopped.

10:22:33 13 But his expertise was very critical before we  
10:22:39 14 showed the business, before we showed anybody else.  
10:22:41 15 Because, again, this was something that was so radical and  
10:22:44 16 disruptive to the industry that we knew that there was  
10:22:48 17 going to be some folks that were not necessarily for it.  
10:22:52 18 So we needed to get some feedback.

10:22:55 19 So that's what this official document talks about  
10:23:00 20 is what we call the WAR report. I don't even remember what  
10:23:07 21 it stands for anymore. But that's that demo that they're  
10:23:10 22 talking -- speaking of that -- when John Brady, we showed  
10:23:15 23 it to him.

10:23:15 24 QUESTION: So prior to 2006, all of the images  
10:23:19 25 that USAA processed through the production system would

10:23:22 1 have been using a TWAIN driver, correct?

10:23:25 2 ANSWER: I'm sorry, repeat the question again.

10:23:28 3 QUESTION: Prior to this email --

10:23:29 4 ANSWER: Okay.

10:23:30 5 QUESTION: -- had USAA ever processed an image

10:23:36 6 caught by something using anything other than a TWAIN

10:23:40 7 driver?

10:23:41 8 ANSWER: We -- at that time, no, I don't believe

10:23:44 9 we did.

10:23:44 10 QUESTION: When did USAA release Deposit@Home?

10:23:49 11 ANSWER: Well, we released it, if I am correct,

10:23:53 12 to -- let me back up a little bit.

10:23:56 13 Whenever we get ready to launch or to deploy a new

10:24:01 14 application, we test it on employees first before we roll

10:24:06 15 it out to the membership because we want to make sure -- so

10:24:09 16 if I remember right, it was around the June time frame,

10:24:13 17 when we -- when we released it to employees.

10:24:16 18 QUESTION: Okay. And then how long after the

10:24:19 19 release to employees was it then released to the

10:24:21 20 membership?

10:24:21 21 ANSWER: I believe it was August 2009. I'm sorry.

10:24:27 22 I'm sorry. 2006. Sorry, I was thinking of mobile.

10:24:33 23 QUESTION: Is it fair to say that in the summer of

10:24:36 24 2006 and into August 2006, your primary focus was on the

10:24:42 25 Deposit@Home product?

10:24:43 1                   ANSWER: In 2006, as far as deploying to our  
10:24:49 2 members at that time in a production environment, it was in  
10:24:53 3 Deposit@Home.

10:24:53 4                   QUESTION: In October 2006, there wasn't any  
10:24:56 5 active project at USAA that involved using a camera phone  
10:25:00 6 to capture a check image, correct?

10:25:05 7                   ANSWER: There wasn't a development project, but  
10:25:07 8 we were working on a project in research. There is a  
10:25:09 9 difference between the two.

10:25:10 10                  QUESTION: Prior to October 2006, what research  
10:25:16 11 had USAA done that involved using a camera phone to capture  
10:25:21 12 an image of a check?

10:25:23 13                  ANSWER: The initial research was using some of  
10:25:26 14 the regular cameras, like a Canon or -- to see if we were  
10:25:32 15 able to -- to -- what type of image that we were going to  
10:25:36 16 be able to do.

10:25:36 17                  So that way we could start making a determination  
10:25:39 18 of what type work that we were going to have to do either  
10:25:43 19 on the front end or the middle tier because it was going to  
10:25:47 20 be a much, much more complex type of environment because  
10:25:50 21 it's not going to be in a controlled environment like a  
10:25:52 22 scanner.

10:25:53 23                  So we started looking at that early on, as much as  
10:25:55 24 we could at that point in time. But it wasn't -- it wasn't  
10:25:58 25 like a development project.

10:26:01 1                   QUESTION: Prior to October of 2006, had USAA done  
10:26:07 2 any research using a camera phone, not a normal digital  
10:26:15 3 like Canon camera, to capture an image of a check?

10:26:20 4                   ANSWER: We were looking -- there were cameras --  
10:26:23 5 camera phones at that point in time. There was like a  
10:26:26 6 Simian, there was the -- Nokia-type devices that we were  
10:26:32 7 starting to take a look at to see what we could do in a  
10:26:36 8 mobile world.

10:26:36 9                   QUESTION: In terms of USAA's ability to write  
10:26:39 10 applications using -- to a camera phone, when did USAA do  
10:26:45 11 that work?

10:26:46 12                   ANSWER: It was early 2007. I think it was -- I  
10:26:48 13 believe it was. That was one of the first projects that  
10:26:52 14 Minya Liang started working on using the Simian OS on the  
10:27:00 15 Nokia, I believe it was. And I think it was early 2007. I  
10:27:05 16 may have my dates wrong, J2ME was -- was available.

10:27:11 17                   QUESTION: So prior to that October 2006 email,  
10:27:15 18 what, if any, work in research had USAA done on mobile  
10:27:22 19 phones and their ability to take an image of a check?

10:27:26 20                   ANSWER: Well, again, we were -- we were looking  
10:27:29 21 at the various phones that were available at that time, to  
10:27:34 22 determine what it was going to be able to take to be able  
10:27:36 23 to capture an image and to be able to control that image  
10:27:41 24 and to be able to pass it on.

10:27:43 25                   QUESTION: Do you recall whether prior to that

10:27:46 1 email anyone at USAA had actually taken a check image with  
10:27:50 2 a mobile phone camera?

10:27:51 3 ANSWER: That, I don't recall if we could or not  
10:28:06 4 at that point in time. Well, let me -- let me clarify --  
10:28:10 5 can I clarify that, or not? Okay.

10:28:16 6 QUESTION: I'm sure your counsel will let you  
10:28:17 7 if -- during his time, if he wants to.

10:28:19 8 ANSWER: Well, as far as being able to take a  
10:28:21 9 picture using -- a check of a mobile phone, that wasn't the  
10:28:25 10 issue. The issue was being able to get the image off of a  
10:28:28 11 phone in a way that we could process it downstream. So  
10:28:31 12 I -- I thought that's what your question was. I may have  
10:28:34 13 misunderstood it.

10:28:36 14 QUESTION: So prior to -- October 2006, USAA had  
10:28:39 15 done -- had not done any work on processing an image of a  
10:28:45 16 check taken with a mobile phone, correct? Is that fair?

10:28:48 17 ANSWER: As far as processing it through the  
10:28:51 18 entire application at that point in time, no, other than  
10:28:56 19 the one October in 2006.

10:28:58 20 QUESTION: Which was a webcam?

10:29:01 21 ANSWER: Which was a webcam, that is true.

10:29:05 22 QUESTION: Did you participate in ANSI's  
10:29:07 23 standard-setting efforts regarding check deposit or check  
10:29:12 24 imaging?

10:29:12 25 ANSWER: I did not participate in anything

10:29:14 1 associated with the standards body or ANSI.

10:29:16 2       QUESTION: Do you know if anyone at USAA did?

10:29:18 3       ANSWER: On the standards body?

10:29:20 4       QUESTION: Uh-huh.

10:29:22 5       ANSWER: Not to my knowledge, no.

10:29:23 6       QUESTION: Did you participate in any other

10:29:27 7 standard-setting efforts related to check deposit during

10:29:32 8 your career?

10:29:33 9       ANSWER: Never in my career, any standards bodies.

10:29:37 10      QUESTION: Do you know if anybody that ever

10:29:41 11 reported to you in USAA's research and development team

10:29:45 12 ever participated in any standards-setting organizations or

10:29:48 13 efforts related to mobile check deposit?

10:29:50 14       ANSWER: It's been a long time, but I don't recall

10:29:53 15 any of our folks being on any standards committees.

10:30:00 16      QUESTION: Is it fair to say that taking images of

10:30:03 17 checks is not something USAA invented?

10:30:06 18      ANSWER: I believe that the way that USAA takes

10:30:12 19 images -- captures images of checks in relation to the use

10:30:20 20 of scanners and the use of mobile -- mobile devices in the

10:30:25 21 auto capture is -- in the mobile is invented by USAA.

10:30:32 22      However, back end processing scanners that take

10:30:36 23 images of checks, USAA -- we didn't invent those.

10:30:39 24      QUESTION: To be clear, other banks took images of

10:30:44 25 checks long before 2006, correct?

10:30:48 1                   ANSWER: Banks took images of checks in the item  
10:30:51 2 processing and back end processing of -- of commercial type  
10:30:55 3 of products.

10:30:58 4                   QUESTION: So the imaging of checks was invented  
10:31:04 5 long before 2006, correct?

10:31:06 6                   ANSWER: The consumer-based imaging of check  
10:31:10 7 captures was invented by USAA.

10:31:12 8                   QUESTION: The imaging of checks was done by banks  
10:31:19 9 long before 2006, yes or no?

10:31:20 10                  ANSWER: The imaging of checks by banks prior to  
10:31:24 11 2006 was done by banks.

10:31:25 12                  QUESTION: So yes?

10:31:27 13                  ANSWER: So USAA did not invent that part of  
10:31:30 14 imaging.

10:31:31 15                  (Videoclip ends.)

10:31:32 16                  THE COURT: Does that complete this witness by  
10:31:36 17 deposition?

10:31:36 18                  MR. SHEASBY: It does, Your Honor.

10:31:38 19                  THE COURT: All right. Ladies and gentlemen,  
10:31:41 20 before we continue with Plaintiff's next witness, we're  
10:31:43 21 going to take a brief recess.

10:31:45 22                  If you will simply close and leave your notebooks  
10:31:48 23 in your chairs. Follow all my instructions, including not  
10:31:51 24 to discuss the case among each other. And we'll be back  
10:31:54 25 shortly to continue with the next witness.

10:31:56 1 The jury is excused for recess at this time.

10:31:59 2 COURT SECURITY OFFICER: All rise.

10:32:00 3 (Jury out.)

10:32:24 4 THE COURT: Please be seated.

10:32:24 5 Counsel, the Court's persuaded that it would

10:32:30 6 benefit by a newly jointly resubmitted proposed final jury

10:32:38 7 instruction and verdict form, given the development of the

10:32:41 8 case, the evidence that's been presented so far in other

10:32:45 9 matters.

10:32:45 10 I think what you've initially presented and filed

10:32:48 11 probably needs to be updated. I'm going to order the

10:32:51 12 parties to jointly meet and confer and prepare and file by

10:32:56 13 noon tomorrow a newly resubmitted proposed final jury

10:33:00 14 instruction and verdict form, indicating clearly any areas

10:33:04 15 of difference by either different font or coloring or

10:33:08 16 something where your competing and diverse positions on any

10:33:13 17 matter can be put side-by-side for the Court's review.

10:33:16 18 Also, I'm going to direct that you furnish a copy

10:33:19 19 of the same document, in addition to filing it on the

10:33:23 20 docket, to the Court by email in Word format.

10:33:26 21 All right. We'll take a short recess and

10:33:29 22 continue. The Court stands in recess.

10:33:31 23 COURT SECURITY OFFICER: All rise.

10:45:30 24 (Recess.)

10:45:32 25 (Jury out.)

10:45:33 1 COURT SECURITY OFFICER: All rise.

10:45:33 2 THE COURT: Be seated, please.

10:45:34 3 Plaintiffs, are you prepared to call your next

10:45:42 4 witness?

10:45:43 5 MR. ROWLES: We are, Your Honor.

10:45:45 6 THE COURT: All right. Let's bring in the jury,

10:46:11 7 please.

10:46:11 8 COURT SECURITY OFFICER: All rise.

10:46:14 9 (Jury in.)

10:46:31 10 THE COURT: Welcome back. Please be seated.

10:46:32 11 Plaintiff, call your next witness.

10:46:51 12 MR. ROWLES: Thank you, Your Honor. Plaintiff

10:46:53 13 calls Professor Thomas Conte.

10:46:57 14 THE COURT: All right. Professor Conte, if you'd

10:47:00 15 come forward and be sworn by the courtroom deputy, please.

10:47:04 16 (Witness sworn.)

10:47:17 17 THE COURT: Please come around and have a seat on

10:47:19 18 the witness stand, sir.

10:47:22 19 MR. ROWLES: May I approach the witness with a

10:47:24 20 demonstrative before we begin, Your Honor?

10:47:26 21 THE COURT: You may.

10:47:32 22 THE WITNESS: Thank you.

10:47:33 23 THE COURT: All right. Mr. Rowles, you may

10:47:37 24 proceed with direct examination.

10:47:38 25 MR. ROWLES: Thank you, Your Honor.

10:47:38 1 TOM CONTE, PH.D., PLAINTIFF'S WITNESS, SWORN

10:47:38 2 DIRECT EXAMINATION

10:47:38 3 BY MR. ROWLES:

10:47:40 4 Q. Good morning, Professor. Could you please introduce  
10:47:44 5 yourself to the jury?

10:47:45 6 A. Good morning. My name is Tom Conte. I live in  
10:47:48 7 Decatur, Georgia, with my wife and two grown children and  
10:47:53 8 three large adopted dogs. I am a professor at Georgia  
10:47:53 9 Tech.

10:48:00 10 Q. Professor Conte, why are you here to testify today?

10:48:01 11 A. I'm here to present a technical analysis of the Wells  
10:48:06 12 Fargo Mobile Deposit system.

10:48:07 13 Q. How many hours have you spent working on this case,  
10:48:09 14 roughly?

10:48:10 15 A. I've worked approximately 300 hours on this case.

10:48:15 16 Q. Are you being compensated for your time spent working  
10:48:19 17 on this case?

10:48:19 18 A. Yes, I am, at a customary rate for someone with my  
10:48:21 19 experience, so the -- \$600.00 per actual hour worked.

10:48:23 20 Q. Is your compensation dependent in any way on the  
10:48:26 21 testimony you're going to give or the outcome of the case?

10:48:28 22 A. Not at all.

10:48:29 23 Q. Could you tell the jury about your educational  
10:48:38 24 background?

10:48:38 25 A. Sure. I grew up in Delaware. I was a person who

10:48:43 1 tinkered with things. I took things apart. So I knew I  
10:48:47 2 wanted to be an engineer.

10:48:50 3 I rolled out of high school with a 2.4, so that  
10:48:54 4 didn't look likely. But, luckily, I grew up in a small  
10:48:57 5 state that had built a university that was too big for the  
10:49:00 6 members of the state, so I was able to get into the  
10:49:03 7 University of Delaware as an applied math major. And then  
10:49:07 8 after a year of working hard, I -- I transferred to  
10:49:10 9 electrical engineering.

10:49:10 10 Q. What did you do after the University of Delaware?

10:49:12 11 A. Well, when I was at the University of Delaware, I  
10:49:16 12 realized I wanted to teach, so I got accepted to the  
10:49:22 13 University of Illinois. And there I got my Master's in '88  
10:49:30 14 and then my Ph.D. in '92.

10:49:34 15 Q. Could you tell the jury about your experience teaching?

10:49:36 16 A. Well, even though it was a very tough job market, I was  
10:49:39 17 lucky enough to get an academic position at the University  
10:49:43 18 of South Carolina right after I graduated, in Columbia,  
10:49:47 19 South Carolina.

10:49:47 20 And that's where I met my future wife. And then  
10:49:50 21 we moved to Raleigh-Durham, North Carolina, where I taught  
10:49:56 22 at North Carolina State University until 2008.

10:49:59 23 My son is special needs. He has severe autism,  
10:50:03 24 and it turned out that Atlanta had much better services, so  
10:50:06 25 we then moved to the Atlanta area. And I teach now at

10:50:10 1 Georgia Tech where I'm a professor actually in two  
10:50:15 2 departments, in computer science and intellectual and  
10:50:19 3 computer engineering.

10:50:19 4 Q. While you were teaching, did you do any consulting work  
10:50:21 5 in industry?

10:50:22 6 A. Yes. I've been lucky to consult throughout my career.

10:50:25 7 When I was at the University of South Carolina, there was a  
10:50:28 8 messenger NCR division there, so I consulted for NCR a day  
10:50:33 9 a week. I worked as an engineer there. That's where we  
10:50:36 10 built bank servers.

10:50:37 11 And then when I went to Raleigh-Durham, there's a  
10:50:41 12 lot of companies there. I was able to get a job a day a  
10:50:45 13 week again, working at IBM. In fact, IBM's largest site in  
10:50:49 14 the company is actually in Raleigh-Durham. You'd think it  
10:50:51 15 was in New York, but it's in Raleigh-Durham.

10:50:54 16 And then a group of us went -- left IBM and did a  
10:50:58 17 start-up. We called it Billions of Operations Per Second,  
10:51:02 18 Inc., or BOPS. Our goal -- our stated goal was to design a  
10:51:07 19 stated processor that was a super computer that could run  
10:51:10 20 on two double A cells.

10:51:12 21 After that, then I -- with some of the people  
10:51:17 22 again from IBM, went and joined Qualcomm, and we created  
10:51:24 23 the Snapdragon mobile processor that's in a lot of Android  
10:51:28 24 phones.

10:51:29 25 When I moved to Georgia Tech, I've continued to

10:51:33 1 consult. I currently consult for Northrop Grumman  
10:51:40 2 Corporation and for two national labs, Sandia and Oak Ridge  
10:51:42 3 National Lab.

10:51:43 4 Q. Have you received any recognitions for your work?

10:51:46 5 A. Well, first, it's not listed here, but I've received a  
10:51:50 6 number of teaching awards. But I'm also a fellow of the  
10:51:54 7 IEEE. That's the Institute of Electrical and Electronics  
10:51:56 8 Engineers. That's my professional organization. And it's  
10:51:59 9 also the largest professional organization of its kind in  
10:52:03 10 the world.

10:52:04 11 And fellow is their highest membership category,  
10:52:08 12 and I was promoted in 2005 for my work on microprocessors  
10:52:12 13 and on computer performance evaluation.

10:52:18 14 In around 2013, I was elected to be president of  
10:52:21 15 the IEEE Computer Society. That's the largest society in  
10:52:26 16 IEEE. And I served in that role in 2015.

10:52:30 17 In 2016, I was elected to be vice chair of the  
10:52:35 18 International Roadmap For Devices and Systems, or IRDS, we  
10:52:38 19 call it.

10:52:39 20 What the IRDS is, it's a collection of volunteers  
10:52:42 21 from across the computer industry, about a hundred of us,  
10:52:47 22 and we predict the future of computing. We identify the  
10:52:52 23 roadblocks to getting there, and we write up a report. We  
10:52:55 24 call it the roadmap. We write it up in odd numbered years,  
10:52:58 25 so we're just about to put out the 2019 one, and update in

10:53:03 1 the even numbered of years. That report is used by  
10:53:06 2 governments, industry, and academia worldwide to set  
10:53:10 3 research and development priorities.

10:53:16 4 MR. ROWLES: At this time, I tender  
10:53:18 5 Professor Conte as an expert in the fields of computer  
10:53:20 6 science and mobile and portable device technology.

10:53:20 7 THE COURT: Is there objection?

10:53:22 8 MR. MELSHEIMER: There is no objection,  
10:53:22 9 Your Honor.

10:53:22 10 THE COURT: Without objection, the Court will  
10:53:24 11 recognize this witness as an expert in those designated  
10:53:27 12 fields.

10:53:28 13 Continue, counsel.

10:53:30 14 Q. (By Mr. Rowles) Professor Conte, could you summarize  
10:53:33 15 for the jury the opinions that you're going to testify  
10:53:35 16 about today?

10:53:36 17 A. Yes. So I analyzed the '681 and the '605 patent.

10:53:41 18 I forgot to mention, I'm the inventor of 40  
10:53:44 19 patents.

10:53:45 20 I analyzed the Wells Fargo Mobile Deposit system,  
10:53:49 21 and then after the analysis I'll present today, I concluded  
10:53:53 22 that the patented inventions are present in the Wells Fargo  
10:53:57 23 Mobile Deposit system.

10:53:58 24 Q. And what does an expert like yourself do to reach those  
10:54:03 25 conclusions?

10:54:03 1 A. Well, we do a number of things. One is, if we can, we  
10:54:07 2 experiment with the accused system. And I'm, in fact, a  
10:54:10 3 Wells Fargo customer. So I had already experimented with  
10:54:12 4 it, but I did more experimentation.

10:54:15 5 Also, the Court issues something called a  
10:54:17 6 protective order.

10:54:19 7 Now, what this is, it's a document that if you  
10:54:21 8 sign it, you're able to access proprietary information. So  
10:54:27 9 I was able to access proprietary documents from Wells  
10:54:30 10 Fargo, proprietary witness testimony of Wells Fargo  
10:54:34 11 engineers, and also the proprietary source code of the  
10:54:39 12 Wells Fargo system itself.

10:54:41 13 Q. And what legal rules did you apply in your analysis?

10:54:44 14 A. Well, I applied the U.S. statute which is making,  
10:54:48 15 using, selling, offering for sale, or importing into the  
10:54:52 16 United States any patented invention without permission.

10:54:56 17 Q. And could you orientate the jury to the different  
10:54:59 18 components of a patent that you looked at?

10:55:01 19 A. Yes. I think we've heard a little about this, but I  
10:55:04 20 thought it would be good to put it all together. A patent  
10:55:06 21 has three patents. It has a cover page that tells you who  
10:55:09 22 the inventors are, the name of the patent, when it was  
10:55:14 23 filed, when it was issued, and it gives an abstract to  
10:55:17 24 someone of skill in the art about what the patent is about.

10:55:20 25 And then there's this narrative called the

10:55:23 1 specification. And that really describes what the  
10:55:24 2 invention is.

10:55:26 3 And then at the end, there are these numbered  
10:55:29 4 sentences that are the claims. And those claims are the  
10:55:34 5 specific definition of what the actual invention is that is  
10:55:38 6 claimed.

10:55:40 7 Q. And how did you go about determining whether the  
10:55:44 8 claimed inventions in the USAA patents were present in the  
10:55:49 9 systems accused of infringement in this case?

10:55:51 10 A. Okay. So what I've done here on the left is I've re --  
10:55:56 11 recreated a claim from one of the patents. In this case,  
10:56:00 12 it's the 86 -- I'm sorry, the '681, Claim 12. And I  
10:56:07 13 divided into rows -- those are called elements.

10:56:10 14 Now, for each element, I look at the accused  
10:56:13 15 system. And if that element is present in the accused  
10:56:15 16 system, then I mark it off.

10:56:16 17 If each and every element of a claim are present,  
10:56:20 18 then the accused system infringes the claim. It's really  
10:56:24 19 that simple.

10:56:25 20 Q. Did you have to consider whether Wells Fargo knew of  
10:56:29 21 the patents or intended to infringe the patents in your  
10:56:32 22 analysis?

10:56:33 23 A. No. No intent or knowledge is required for  
10:56:36 24 infringement.

10:56:36 25 Q. So could you begin by giving the jury a roadmap of the

10:56:42 1 topics that you're going to cover today?

10:56:43 2 A. Sure. So I'm going to start describing the USAA  
10:56:47 3 patented inventions. And then I'm going to give you my  
10:56:50 4 analysis of the Wells Fargo Mobile Deposit system.

10:56:54 5 Now, with those two ingredients we can do that  
10:56:59 6 analysis I just talked about. So we'll do that  
10:57:00 7 element-by-element analysis of each of the asserted claims.

10:57:03 8 Q. So beginning with the USAA patents, could you briefly  
10:57:08 9 describe what the USAA patents are about?

10:57:09 10 A. Yes. So these are about using a general purpose  
10:57:13 11 computer. You can find this description in your juror  
10:57:18 12 notebooks in the '605 patent, Column 3. It's about using  
10:57:23 13 the -- the computers that people own or can easily acquire  
10:57:27 14 to go ahead and deposit checks.

10:57:31 15 Q. And how does this use of a general purpose computer to  
10:57:34 16 deposit checks compare to other forms of depositing checks?

10:57:38 17 A. Well, as you heard Mr. Brady say, and he held this --  
10:57:41 18 actually this apparatus I have a picture of here. Prior to  
10:57:45 19 this, you would have to go out and buy this specialized  
10:57:47 20 scanner. And it actually read the magnetic ink, you know,  
10:57:52 21 if you -- if you look at a check that -- I happen to have  
10:57:57 22 one here. That funny number on the bottom are magnetic ink  
10:58:01 23 characters.

10:58:01 24 And so this thing actually goes through, and it  
10:58:04 25 reads those characters. So you'd have to use a device like

10:58:06 1 that. These are expensive. They're usually purchased by  
10:58:09 2 businesses or enterprises. So the -- the invention here  
10:58:12 3 does away with the need to do that or even have a magnetic  
10:58:17 4 ink reader.

10:58:17 5 Q. Is there a particular definition of general purpose  
10:58:23 6 computer that you applied in your analysis?

10:58:25 7 A. Yes, there is. So a general purpose computer was  
10:58:30 8 defined by the Court, and the definition that Your Honor  
10:58:33 9 gave us was a computer that is not specialized for a  
10:58:36 10 particular purpose.

10:58:36 11 So that's -- that's like your smartphone. That's  
10:58:40 12 a general purpose computer in there. You can download any  
10:58:42 13 apps you want and do anything you want. I -- I do the  
10:58:45 14 majority now of my email and actually even editing  
10:58:49 15 documents on my smartphone these days.

10:58:51 16 Q. And did you also consider the testimony of Wells Fargo  
10:58:54 17 engineers about general purpose computers?

10:58:56 18 A. I did. So here is Mr. Nishant Usapkar. He's a Wells  
10:59:01 19 Fargo engineer. He was asked under oath, and he said: The  
10:59:05 20 iPhone is a general purpose computer, yes.

10:59:07 21 So he agrees with me.

10:59:08 22 Q. So could you give an example from the USAA patents of  
10:59:13 23 how check deposit is accomplished using these consumer  
10:59:19 24 devices?

10:59:19 25 A. Yes. So here's an excerpt. This is from Column 10 of

10:59:23 1 the '605 patent. And it talks about providing a software  
10:59:25 2 component -- you see that 532, that's a reference to a  
10:59:30 3 figure. A lot of times when we read these, we skip over  
10:59:32 4 them. But anyway, a software component 532 to a computer  
10:59:37 5 530. That -- that's that software component. That's that  
10:59:40 6 downloadable app.

10:59:42 7 Q. And what does the specification describe doing with  
10:59:44 8 that downloadable component?

10:59:46 9 A. Well, if we go a little later here -- thank you. Thus,  
10:59:50 10 while the computer 530 may be customer-controlled, the  
10:59:54 11 customer downloads component 532 to facilitate deposit --  
11:00:00 12 now, this is key -- thereby allowing the financial  
11:00:03 13 institution to effectively control certain aspects of the  
11:00:06 14 image generation and delivery process.

11:00:07 15 In essence, the financial institution is putting a  
11:00:13 16 program in your phone that works like a teller at a bank.

11:00:17 17 Q. Does the patent specification say anything else about  
11:00:20 18 how this general purpose computer or consumer device can be  
11:00:24 19 configured?

11:00:24 20 A. Yes. It talks about the general purpose computer may  
11:00:27 21 be in a desktop or a laptop configuration.

11:00:31 22 Q. And what is a laptop configuration in these patents?

11:00:33 23 A. Yeah, you know, a laptop configuration, we all know, is  
11:00:36 24 something that's self-contained, all the components in one  
11:00:39 25 box, and it's battery-powered.

11:00:44 1 Q. Does the patent give any particular examples of types  
11:00:47 2 of computers that could be used with the invention?

11:00:49 3 A. Yes. Here's Figure 4 from the '605, and it's showing  
11:00:54 4 some pretty conventional looking computers. You'll see  
11:00:57 5 that, right? And it says: The physical environment  
11:01:01 6 depicted may show the connected devices as computers, such  
11:01:06 7 as -- such illustration is merely exemplary. And the  
11:01:09 8 physical environment may be alternatively depicted or  
11:01:13 9 described comprising various digital devices, such as a  
11:01:17 10 PDA.

11:01:17 11 Q. And what is a PDA -- or what was a PDA in 2006?

11:01:20 12 A. We called handheld computers a personal digital  
11:01:27 13 assistant back then.

11:01:27 14 Q. And could you give an example of PDA that was available  
11:01:29 15 in 2006?

11:01:29 16 A. Yes. I dug this up. This is a picture of one that I  
11:01:33 17 owned in 2006, and I was a proud owner of. It was very  
11:01:41 18 geek chic at the time. It was a Palm TREO 700W smartphone.  
11:01:47 19 It had a keyboard that you could enter things in. It ran a  
11:01:47 20 mini version of the Windows operating system. It had a  
11:01:48 21 touchscreen. It had a D-pad, so you could move the mouse  
11:01:52 22 around. It had on the back a camera sensor so you could  
11:01:56 23 take pictures. And you could also download any app you  
11:01:59 24 wanted into this phone.

11:02:00 25 THE COURT: Dr. Conte, can you slow down a little

11:02:04 1 bit?

11:02:05 2 THE WITNESS: My apologies, Your Honor. I might  
11:02:06 3 have had too much coffee. I will try --

11:02:09 4 THE COURT: Well, no matter what you may or may  
11:02:11 5 not have ingested, please slow down.

11:02:14 6 THE WITNESS: I'm sorry, Your Honor.

11:02:16 7 THE COURT: Go ahead, counsel.

11:02:17 8 MR. ROWLES: I'll proceed, Your Honor. Thank you.

11:02:21 9 Q. (By Mr. Rowles) Dr. Conte, is a PDA like this Palm  
11:02:26 10 TREO you just spoke about a type of device that you could  
11:02:27 11 have invented -- or, excuse me, could have implemented the  
11:02:29 12 USAA invention with back in 2006?

11:02:30 13 A. Yes. In fact, at that time, there were also other  
11:02:33 14 kinds of phones. You know, the -- Apple didn't invent the  
11:02:37 15 idea of a smartphone. What happened was Apple is a great  
11:02:42 16 company at marketing things. And so Steve Jobs came out  
11:02:45 17 wearing a turtleneck and jeans and held up this iPhone and  
11:02:50 18 said, this is the iPhone.

11:02:51 19 But, honestly, that was a pretty bad smartphone  
11:02:53 20 when it first came out. A lot of us were shocked it didn't  
11:02:57 21 have a keyboard. You had to type on the glass. And still  
11:03:00 22 to this day, I can type faster on a physical keyboard than  
11:03:03 23 I can on the iPhone.

11:03:06 24 Q. Could you give some examples of types of devices that  
11:03:10 25 could be used with the -- the USAA system described in

11:03:13 1 these patent specifications?

11:03:14 2 A. Sure. You know, the -- this system is durable. It --  
11:03:19 3 it really can be used with any consumer device. All you  
11:03:22 4 need is a general purpose computer and a camera. And that  
11:03:25 5 includes the Optimus -- LG Optimus Pro. This looks a lot  
11:03:32 6 like my dearly departed Palm TREO. There is the Moto  
11:03:33 7 Droid. Here's an iPhone 11. And -- and here's an iPad  
11:03:38 8 Pro. You'll see this thing looks -- essentially it's a  
11:03:41 9 laptop.

11:03:43 10 Q. And how do the consumer devices communicate with the  
11:03:46 11 bank for check deposit?

11:03:48 12 A. So the patent calls out -- and this is in Column 7. It  
11:03:52 13 calls out several different ways you can do communication.  
11:03:56 14 And it goes through this list, Internet, Internet, one of  
11:04:02 15 the ways it calls out is a cellular network.

11:04:05 16 Q. Now, how -- we've talked about the general purpose  
11:04:09 17 computer. How is the general purpose computer in the USAA  
11:04:13 18 patents connected to the -- the capture device?

11:04:15 19 A. So the patent calls out that it's communicatively  
11:04:20 20 coupled. If I were to take a hammer and break apart my --  
11:04:24 21 my Palm TREO -- well, it's not a Palm TREO. I'm sorry, my  
11:04:27 22 Google pixel here, you'll find the motherboard, and you'll  
11:04:29 23 find the image sensor. And it's connected with a ribbon  
11:04:34 24 cable, with a wire to that motherboard.

11:04:36 25 And then the patent goes on and says: The

11:04:38 1 computer may comprise software that allows the user to  
11:04:41 2 control certain operations of the image capture -- capture  
11:04:45 3 device. You see this is just a sensor.

11:04:48 4 So there's software that runs on here. In fact,  
11:04:51 5 it's part of the Android operating system that let's you  
11:04:54 6 read images off of that sensor.

11:04:57 7 Q. Were you in the courtroom earlier today, Dr. Conte,  
11:05:01 8 when there was discussion of a TWAIN diver or TWAIN  
11:05:06 9 software?

11:05:06 10 A. Yes. TWAIN is a software object that let's you read  
11:05:12 11 things off of an image sensor. It's an acronym that stands  
11:05:15 12 for technology without an interesting name. I -- I kid you  
11:05:21 13 not.

11:05:23 14 So TWAIN was one way to do it. There's, of  
11:05:26 15 course, a lot of different ways. With the sensor  
11:05:29 16 integrated in the phone, Android uses its own software  
11:05:36 17 object to do that.

11:05:37 18 Q. So to be clear, TWAIN software is one type of software  
11:05:40 19 that could communicatively couple computers to capture  
11:05:43 20 devices; is that right?

11:05:44 21 A. Yeah, it's one kind. I mean, the patent claims don't  
11:05:46 22 say TWAIN. So you can use any kind of software object.

11:05:55 23 Q. Could you summarize for the jury the key features of  
11:05:58 24 the USAA patents that we've just talked about?

11:05:59 25 A. Sure. So these are about check deposit using your own

11:06:02 1 devices. And the bank controls that check deposit through  
11:06:06 2 this downloadable app on your phone. And you don't have to  
11:06:08 3 go out and buy any specialized magnetic ink reader/scanner  
11:06:16 4 kind of thing to do this.

11:06:17 5 Q. Okay. So what's the next step in your analysis?

11:06:19 6 A. All right. So now let's talk about the Wells Fargo  
11:06:22 7 Mobile Deposit system.

11:06:32 8 Q. So what is the system accused of infringement in this  
11:06:32 9 case?

11:06:32 10 A. It's shown here inside this red rectangle I have. It  
11:06:36 11 has servers that are back in the data center. These are a  
11:06:39 12 lot like the servers I built when I was at NCR. And those  
11:06:43 13 run specialized software that Wells Fargo wrote for  
11:06:46 14 managing check deposits as they come in.

11:06:49 15 There's also a mobile app that runs on your phone  
11:06:52 16 that talks to those servers.

11:06:55 17 Q. And what role does the Wells Fargo software play in the  
11:06:59 18 accused system?

11:07:00 19 A. Well, the Wells Fargo software controls the entire  
11:07:02 20 deposit process.

11:07:04 21 Q. And so how in this case did you go about analyzing that  
11:07:09 22 Wells Fargo software?

11:07:10 23 A. Well, I analyzed the source code.

11:07:17 24 Now, what source code is, is what I teach computer  
11:07:20 25 science students about. It's really the set of

11:07:24 1 instructions that control a computer. And I'm going to  
11:07:26 2 show you some -- the pieces I'll show you I'll walk through  
11:07:30 3 how they work.

11:07:31 4 The source code is really what allows the Wells  
11:07:34 5 Fargo Mobile Deposit system to control your phone.

11:07:36 6 Q. And what specific source code did you look at in this  
11:07:40 7 case?

11:07:40 8 A. So under direction of the Court, Wells Fargo produced  
11:07:46 9 multiple copies of the source code for the Android version,  
11:07:50 10 for the iPhone version, and for the server code. And here  
11:07:54 11 I'm showing all the versions I looked at. I looked at all  
11:07:58 12 of these versions.

11:07:59 13 I determined that all the versions use the USAA  
11:08:03 14 patented technology we're talking about. But I will focus  
11:08:09 15 on versions that are the latest, which are 3.7.1 and 4.5.1,  
11:08:16 16 since these are representative of all the other versions.

11:08:19 17 Q. So are all of the different versions of the iPhone and  
11:08:21 18 Android application and the server code software that were  
11:08:27 19 reviewed all made by Wells Fargo?

11:08:30 20 A. Yes.

11:08:30 21 Q. And so who makes the Wells Fargo system, the system  
11:08:38 22 accused of infringement?

11:08:39 23 A. So Wells Fargo does. Wells Fargo creates the Wells  
11:08:43 24 Fargo Mobile Deposit system. And the ingredients of that  
11:08:45 25 are Wells Fargo's server -- their servers, right, both the

11:08:49 1 hardware and the software. And then the customer normal  
11:08:54 2 device when it's under the direction of the Wells Fargo  
11:08:57 3 created Mobile Deposit app.

11:08:58 4 Q. And what does Wells Fargo do with the Wells Fargo  
11:09:01 5 Mobile Deposit system?

11:09:01 6 A. Well, using this system, Wells Fargo is able to accept  
11:09:07 7 remote check deposits for mobile devices. So Wells Fargo  
11:09:10 8 ultimately controls all the software and hardware that is  
11:09:13 9 used with the Wells Fargo Mobile Deposit system.

11:09:22 10 Q. So that -- is that Wells Fargo software you looked at  
11:09:25 11 sort of the glue that brings these pieces together?

11:09:28 12 A. It's -- it's the glue that makes the system, yes.

11:09:32 13 Q. Could you give some examples of how Wells Fargo  
11:09:35 14 controls the Mobile Deposit process?

11:09:37 15 A. Yes. So here are some examples. They come from two  
11:09:40 16 different sources. One is an Access FAQ that Wells Fargo  
11:09:44 17 has on their website, and that's reproduced in PX-365 and  
11:09:49 18 366.

11:09:50 19 Another is the Wells Fargo Online Access  
11:09:53 20 Agreement. That's in PX-1409 that you agree to when you  
11:09:58 21 download the app.

11:10:00 22 So they say Wells Fargo customers must download  
11:10:03 23 and install a compatible version of the Wells Fargo mobile  
11:10:06 24 app from the App Store for their mobile devices. If the  
11:10:14 25 customer installs the app on an incompatible device, the

11:10:17 1 customer will not be able to mobile deposit checks.

11:10:21 2 Q. So does Wells Fargo accept mobile deposits from mobile

11:10:25 3 devices that are not running the Wells Fargo application?

11:10:27 4 A. No. In fact, the agreement will tell you if you

11:10:31 5 attempt to do that, they can revoke your privilege to do

11:10:34 6 mobile deposit.

11:10:34 7 Q. And did you find anything else in -- in these website

11:10:40 8 materials and -- and online agreement?

11:10:41 9 A. Yes. They say that Wells Fargo's customers must agree

11:10:45 10 to and abide by the Online Access Agreement in order to

11:10:49 11 make use of Wells Fargo's Mobile Deposit service. Wells

11:10:54 12 Fargo's customers must follow Wells Fargo's instructions to

11:10:59 13 successfully mobile deposit checks with Wells Fargo. And

11:11:02 14 the customer is required to submit images of sufficient

11:11:05 15 quality that can be processed for deposit.

11:11:11 16 Q. Could you give the jury an overview of what this mobile

11:11:16 17 deposit process actually looks like in the accused system?

11:11:18 18 A. Sure. So what you do is you launch the app on your

11:11:20 19 phone. And it will ask you to log in with a user name and

11:11:25 20 password. Then after you do that, you can click these

11:11:28 21 three horizontal bars, and that opens a menu. This menu

11:11:32 22 says things such as: Go to account summary, deposit

11:11:36 23 checks, transfer and pay, account services, et cetera.

11:11:41 24 Let's say we choose -- oh, I'm sorry.

11:11:43 25 Q. I apologize, Professor Conte, I didn't mean to speak

11:11:46 1 over you.

11:11:46 2 What happens if you select deposit checks?

11:11:48 3 A. Okay. By the way, the screenshots I'm going to

11:11:53 4 present, I believe, are in Exhibit 1402.

11:11:58 5 Let's say you select deposit checks. What comes

11:12:01 6 up next is this screen. And it asks you to choose a

11:12:04 7 deposit account. Here I've chosen everyday checking.

11:12:11 8 Q. What happens next?

11:12:12 9 A. Next, it asks you to enter the deposit amount.

11:12:15 10 Q. And what's the significance of the deposit button being

11:12:19 11 disabled at this point?

11:12:20 12 A. So you cannot initiate deposit until after you've taken

11:12:25 13 a picture of the front and the back of the check. That's

11:12:28 14 kind of like going through a drive-through at a bank and

11:12:31 15 you give them the deposit slip and you forget to give them

11:12:35 16 your check, they can't do the deposit, right? So you can't

11:12:38 17 initiate that deposit until those two images are taken.

11:12:41 18 Q. So how does the mobile device get the images of the

11:12:43 19 check?

11:12:43 20 A. What it does is it has this direction here. Take

11:12:47 21 photos of the front of check, back of check, and it has

11:12:50 22 some tips. You can click on that. It's a web link, and it

11:12:53 23 will pop up some tips.

11:12:55 24 And what you do is you press one of these two

11:12:58 25 buttons, either the -- the camera for the front of the

11:13:01 1 check or the camera for the back.

11:13:02 2 Q. And what does that look like in the phone?

11:13:04 3 A. So here's what shows up if you press front of check.

11:13:09 4 And what you'll see is it's the -- a camera app. It says

11:13:12 5 front of check will take the photo or you can use the

11:13:18 6 camera button. If you're too far away from the check, it

11:13:20 7 will say, hey, get closer.

11:13:23 8 Q. And so once you've captured these check images or once

11:13:28 9 the mobile device has captured the check images, what

11:13:33 10 happens next?

11:13:34 11 A. Okay. When you capture both the front and the back of

11:13:36 12 the checks, it gives you pictures of that so you can see if

11:13:38 13 you want to retake them.

11:13:39 14 And now this is critical. After you've done that,

11:13:42 15 in essence, you've given the bank your check. So it

11:13:45 16 enables that deposit button.

11:13:47 17 Q. And what happens after the deposit is submitted to the

11:13:50 18 bank?

11:13:51 19 A. So let's say that you click that button. Then what

11:13:56 20 comes back is a confirmation of deposit. And this tells

11:13:59 21 you things, such as successfully deposited your check. And

11:14:03 22 it gives a specific time, since Wells Fargo is a West Coast

11:14:06 23 bank. It tells you the account that it's deposited into,

11:14:10 24 the amount. It will tell you the date it's -- of deposit.

11:14:16 25 It will also tell you how much funds are available, and

11:14:21 1 also the date they're available. And then it gives you a  
11:14:25 2 confirmation code.

11:14:27 3 So what this is, this is your receipt that you get  
11:14:28 4 back from the teller, telling you you've successfully  
11:14:32 5 deposited the check.

11:14:34 6 Q. And did you prepare a video to -- excuse me, to  
11:14:37 7 demonstrate those steps in practice?

11:14:39 8 A. Yes. I directed an actor to go ahead and deposit this  
11:14:43 9 actual check we see here. So we'll see this happen.

11:14:47 10 (Videoclip played.)

11:14:49 11 A. So they're choosing deposit checks. There's entering  
11:14:52 12 the amount. He enters \$5.00. Then he takes a picture of  
11:15:04 13 the front of the check, says, hey, you're too far away, get  
11:15:07 14 closer. Then he's going to take a picture of the back of  
11:15:13 15 the check. Turns over the check. It gives him a guide to  
11:15:18 16 show him where the signature line should go. Again, says  
11:15:25 17 you're too far away.

11:15:30 18 Now, there are the two images. And you see the  
11:15:32 19 deposit button is enabled. He presses that. It  
11:15:36 20 communicates with Wells Fargo's servers, and then there's  
11:15:38 21 that confirmation receipt.

11:15:40 22 Q. So what's the next step in your analysis?

11:15:43 23 A. Well, now we're ready to go through the  
11:15:46 24 element-by-element infringement analysis itself.

11:15:48 25 Q. And what claims of the USAA patents did you analyze?

11:15:53 1 A. I analyzed the claims that are asserted in this case.

11:15:57 2 Those are the '681, Claims 12, 13, 14, 20, 22, and 30.

11:16:05 3 And the '605, Claims 1, 3, 11, 12, 13, 14, and 20

11:16:12 4 [sic].

11:16:14 5 Q. Was that 22, the last one?

11:16:15 6 A. Yes, it was. My apologies. That was 22.

11:16:17 7 Q. So let's look at Claim 12 of the '681 patent, and could

11:16:21 8 you please just orient the jury to the claim that you've

11:16:24 9 presented?

11:16:25 10 A. Okay. On the left is how the claim appears in your

11:16:28 11 juror notebook, if you look at the back of the patent.

11:16:31 12 It's pretty small writing. It's kind of hard to parse.

11:16:35 13 So what I've done is I've broken that language out

11:16:37 14 into the table on the right. And then I've labeled each

11:16:43 15 row of the table -- each of the elements A through K.

11:16:46 16 Q. So before we begin in Claim 12, is there any particular

11:16:51 17 area of Claim 12 where there's some technical disagreement

11:16:54 18 between yourself and -- and Wells Fargo?

11:16:56 19 A. Yes. For Claim 12 of the 86 -- of the '681, there is

11:17:02 20 some disagreement about Element H. So when we get to that

11:17:05 21 element, I'll tell you why I think the position of Wells

11:17:09 22 Fargo is incorrect.

11:17:10 23 Q. And is it your understanding that there's no

11:17:18 24 disagreement that each of these other elements is present

11:17:20 25 in the system accused of infringement?

11:17:21 1 A. Yes. That's my understanding that Wells Fargo doesn't  
11:17:23 2 contest that the other elements are present.

11:17:25 3 Q. So let's begin with Element A. What is Element A?

11:17:31 4 A. So it's a system for allowing a customer to deposit a  
11:17:34 5 check using the customer's own mobile device with a digital  
11:17:38 6 camera, the system configured to ask the customer to log in  
11:17:42 7 with a user name and password.

11:17:45 8 Now, the Court gave us a definition of mobile  
11:17:48 9 device. And that definition is: Handheld computing  
11:17:54 10 device.

11:17:55 11 Q. And is it your understanding that that definition from  
11:17:55 12 the Court, that that applies to the whole case; everyone  
11:18:00 13 has to follow that definition? Is that your understanding?

11:18:00 14 A. Yes, that's my definition -- that's -- I'm sorry,  
11:18:06 15 that's my understanding, yes.

11:18:07 16 Q. Does Claim 12 of the '681 patent require a mobile  
11:18:11 17 phone?

11:18:11 18 A. No, just a mobile device.

11:18:12 19 Q. Are there mobile devices that aren't mobile phones?

11:18:15 20 A. Yes. I showed you my -- my iPad here.

11:18:19 21 Q. So what evidence did you look at for Element A of  
11:18:23 22 Claim 12 of the '681 patent?

11:18:25 23 A. Okay. What I'm showing here is a table of devices that  
11:18:29 24 Wells Fargo has tested that work with their mobile app.  
11:18:33 25 And you'll see these testing procedures in PX-486 and

11:18:37 1 PX-487.

11:18:39 2 What you see on the right-hand column is what the

11:18:43 3 size of the digital camera sensor is. And let me proudly

11:18:47 4 point out that that second line uses the 1.0 gigahertz

11:18:53 5 Scorpion. That's the chip that I worked on.

11:18:56 6 Q. So are all the devices used with the Wells Fargo system

11:18:59 7 mobile devices with digital cameras?

11:19:00 8 A. Yes, they are.

11:19:01 9 Q. And do Wells Fargo's engineers agree about that?

11:19:06 10 A. Yes. After Nishant Usapkar -- right after he said that

11:19:11 11 the iPhone is a general purpose computer, he was asked:

11:19:14 12 And it has a general-purpose camera on it, correct?

11:19:18 13 And he said: Yeah, any mobile device will have a

11:19:23 14 general purpose camera on it, that's right.

11:19:26 15 So he agrees with me.

11:19:27 16 Q. And what else did you look at for Element A of Claim

11:19:30 17 12?

11:19:30 18 A. Also, this log-in using a user name and password. And

11:19:33 19 when you first fire up the app, it's going to ask you for a

11:19:37 20 user name and password.

11:19:40 21 Q. So is Element A of Claim 12 present?

11:19:43 22 A. Yes, Element A is present in the Wells Fargo Mobile

11:19:47 23 Deposit system.

11:19:49 24 Q. And so what did you analyze next?

11:19:51 25 A. So next, let's move on to B, C, and D. So B says: A

11:19:57 1 customer's mobile device including:

11:19:59 2 C says: Camera software that works with a digital

11:20:02 3 camera.

11:20:02 4 And D says: A downloadable app associated with a

11:20:09 5 bank to work with the camera software, and it goes on to

11:20:11 6 say, to control submission of a check for deposit.

11:20:14 7 So let's talk about those two highlighted pieces.

11:20:17 8 Q. So what did you look at in the Wells Fargo system

11:20:20 9 related to this downloaded app with -- with camera

11:20:24 10 software?

11:20:25 11 A. Okay. So let's say you want to make some money by

11:20:28 12 writing an iPhone app that you put in the Apple App Store.

11:20:33 13 What you do is you go to the document that's in the first

11:20:36 14 block here, that's called the developer's manual. And what

11:20:38 15 it tells you is to use the camera, you have to use a

11:20:41 16 software object called AVCaptureSession. That's the

11:20:47 17 equivalent of that TWAIN driver that we talked about.

11:20:50 18 In the next box, I'm showing you your first piece

11:20:53 19 of source code. And let me just explain it quickly.

11:20:56 20 On the left you see that line number. That's 594.

11:21:00 21 That's actually not part of the software. That's just

11:21:02 22 there so I can reference the different lines. But you'll

11:21:06 23 see that it uses that AVCaptureSession software. Now

11:21:06 24 what's using that -- what's using that is the Wells Fargo

11:21:15 25 downloadable app, and it works with the camera software to

11:21:17 1 control submission of a check for deposit.

11:21:19 2 Q. And is this software an example of that software that

11:21:25 3 communicatively couples the general purpose computer to the

11:21:28 4 image capture device that we talked about earlier?

11:21:30 5 A. Yes, that's exactly what it is.

11:21:32 6 Q. So are Elements B, C, and D present in Claim 12?

11:21:43 7 A. Yes, they are.

11:21:43 8 Q. And there's no dispute about that, right, to your

11:21:44 9 understanding?

11:21:44 10 A. There's no dispute.

11:21:46 11 Q. What is the next element that you looked at?

11:21:48 12 A. This is instructing the customer to have a digital

11:21:51 13 camera take photos of the front and the back of the check.

11:21:54 14 Q. So what did you look at for Element E?

11:21:57 15 A. So I looked at two things. One, we saw this screen

11:22:00 16 earlier, both in my walk-through and then in the video.

11:22:03 17 And this screenshot is in PX-1402. But I also looked at

11:22:07 18 the code itself which is in DTX-11 to see where this screen

11:22:12 19 is built. What this screen shows you is take photo, and

11:22:17 20 then it says front and back of check.

11:22:20 21 Q. So is Element E present in the Wells Fargo system?

11:22:23 22 A. Yes, it is.

11:22:24 23 Q. And what about Element F, what did you look at for

11:22:27 24 that?

11:22:27 25 A. So Element F says: Displaying a graphical illustration

11:22:31 1 to assist the customer in taking the photos, the  
11:22:35 2 illustration assisting the customer in placing the digital  
11:22:39 3 camera a proper distance away from the check.

11:22:43 4 Q. And is that done in the Wells Fargo system?

11:22:45 5 A. Yes. Again, we already saw this in both my  
11:22:49 6 walk-through and then in the video. And I also verified  
11:22:52 7 that this is what's going on in the software itself in  
11:22:59 8 DTX-11. What it does is it gives you this frame, and it  
11:23:02 9 will give you advice about the distance. It will say, for  
11:23:06 10 example, get closer.

11:23:07 11 Q. And so what did you look at next?

11:23:08 12 A. Next I looked at Element G, which is presenting the  
11:23:12 13 photos of the check to the customer after the photos are  
11:23:14 14 taken.

11:23:15 15 Q. And does the Wells Fargo system do that, too?

11:23:17 16 A. Yes, again, we saw that in the walk-through and the  
11:23:20 17 video. It presents photos of the check so that you can  
11:23:23 18 decide whether or not they're good images. And that I  
11:23:28 19 verified by looking at the source code, DTX-11, and this  
11:23:32 20 just shows you a little larger version of that, and it's  
11:23:35 21 the same image.

11:23:38 22 Q. So Element G, is that present in the Wells Fargo  
11:23:41 23 system, as well?

11:23:41 24 A. Yes, Element G is present, as well.

11:23:44 25 Q. So what is Element H of Claim 12?

11:23:48 1 A. Element H is -- let's see if we can go through this.

11:23:53 2 Confirming that a mobile check deposit can go forward

11:23:55 3 after, and then the second part is, the system performs

11:24:00 4 optical character recognition on the check, where that

11:24:02 5 optical character recognition determines the amount of the

11:24:05 6 check and is going to read that -- that magnetic ink

11:24:09 7 character recognition number on the bottom of the check.

11:24:10 8 Q. So, first, can you explain to the jury what optical

11:24:16 9 character recognition, or OCR, is?

11:24:17 10 A. Yes. I think I heard in Wells Fargo's opening that it

11:24:22 11 was old technology. The only old technology is reading

11:24:25 12 printed text.

11:24:26 13 What OCR does is actually more like artificial

11:24:31 14 intelligence. It has to be able to decode, as shown in

11:24:34 15 this example, the written by anybody penmanship for \$5.00.

11:24:43 16 Imagine how many different people write the number 5 in

11:24:47 17 different ways. It has to be able to determine all of

11:24:49 18 those.

11:24:49 19 It also determines the M-I-C-R line, the MICR, I

11:24:53 20 think if you -- I might say that, MICR instead of M-I-C-R.

11:24:57 21 That line is really the DNA of the check. It gives you the

11:25:01 22 account number, it gives you the check number and the

11:25:03 23 routing number. So every check is uniquely identified by

11:25:07 24 that MICR line.

11:25:08 25 Q. And what -- what does the Wells Fargo system do with

11:25:14 1 this optical character recognition for check deposits?

11:25:17 2 A. Well, imagine, if you will, that you entered \$500.00 on

11:25:22 3 the form and then tried to submit a \$5.00 check. So what

11:25:26 4 the Wells Fargo system does is it looks at that and it very

11:25:32 5 politely says the amount you entered didn't match the

11:25:35 6 amount on the check photo. But it could be that you either

11:25:38 7 accidentally or on purpose were trying to get away with

11:25:41 8 something.

11:25:42 9 It also looks at the MICR line, and if it can't

11:25:44 10 find that at all, it knows it isn't an image of a check

11:25:49 11 because all checks have that line on it. So it will say,

11:25:52 12 couldn't process the check, take a new photo. And these

11:25:54 13 are described in PX-1416, and, again, I verified where

11:26:00 14 these happened in the software itself in DTX-11.

11:26:04 15 Q. So is the Wells Fargo's system validation of the check

11:26:09 16 amount and the MICR line part of its effort to prevent

11:26:14 17 fraud in mobile check deposits?

11:26:16 18 A. I think so, yes, absolutely. Like I said, imagine you

11:26:19 19 try to deposit a \$5.00 check but you entered on the form

11:26:24 20 \$500.00. Wells Fargo will give you a credit of a hundred

11:26:27 21 dollars. You've made \$95.00 just by fooling the system.

11:26:31 22 Q. Does this validation happen before that confirmation

11:26:35 23 message is displayed on the customer's device?

11:26:36 24 A. Yes, it does. So the validation message -- let's --

11:26:43 25 let's -- how to put this.

11:26:44 1 The optical character recognition is done before  
11:26:48 2 you get the confirmation message. So it's going to  
11:26:52 3 check -- it makes sense, right? It's going to check that  
11:26:54 4 there aren't any errors in the check, that it can read the  
11:26:58 5 account number, that the number you entered matches the  
11:27:01 6 number on the check before it's going to do the deposit.

11:27:05 7 Q. So if we think back to that video demonstration, this  
11:27:10 8 validation is happening while the customer is kind of  
11:27:12 9 waiting for that response back with the confirmation after  
11:27:16 10 they've hit submit deposit; is that right?

11:27:18 11 A. Yeah, that is exactly what's happening.

11:27:21 12 Q. So this happens pretty quickly from the user's  
11:27:23 13 perspective, right?

11:27:23 14 A. Well, from the user's perspective, that's because the  
11:27:27 15 servers are quite quick.

11:27:29 16 Q. And so what happens after a successful validation of  
11:27:35 17 the amount of the check and the MICR line?

11:27:37 18 A. Okay. So, as I said, you get that confirmation message  
11:27:42 19 after those two things are done.

11:27:44 20 Wells Fargo, on their website, tells you, you'll  
11:27:48 21 receive a confirmation message on your mobile device for  
11:27:51 22 each successful deposit.

11:27:53 23 And sure enough, that's what we saw in both my  
11:27:56 24 walk-through and in the video. You get this confirmation  
11:28:00 25 message. This confirmation message is your receipt.

11:28:04 1 Q. Is there a relationship between the confirmation  
11:28:08 2 message that the mobile device displays and the optical  
11:28:12 3 character recognition and analysis that happens on the  
11:28:14 4 servers?

11:28:15 5 A. Yes, there is. So this is our first big piece of -- of  
11:28:19 6 source code.

11:28:19 7 So let me describe and orient you to some of this.  
11:28:24 8 You see what's in blue that's preceded with a double slash,  
11:28:28 9 those are actually comments from the source code writer.  
11:28:31 10 The source code writer puts in comments for other  
11:28:34 11 programmers when they come along maybe to fix a bug. And  
11:28:38 12 it says, we load information from the server and use them  
11:28:42 13 to populate the form.

11:28:43 14 Now, if you go some lines down, what I've done is  
11:28:46 15 I've put, in this yellow rectangle, information that's  
11:28:51 16 coming back from the server, and then I've highlighted how  
11:28:54 17 it picks off the different pieces of that form. You'll see  
11:28:58 18 where it gets the account you deposit into, the amount, the  
11:29:03 19 status, the confirmation code, the available amount data,  
11:29:10 20 the available amount, et cetera.

11:29:11 21 Q. Now, you mentioned earlier that Element H is one where  
11:29:16 22 there's some disagreement or you understand there's some  
11:29:18 23 disagreement by Wells Fargo. Could you explain that?

11:29:20 24 A. Wells Fargo says that the optical character recognition  
11:29:25 25 doesn't happen on the server or can't happen on the server,

11:29:31 1 according to the claim.

11:29:32 2 Q. Well, let me ask it this way: Were you here during  
11:29:36 3 opening statements, Dr. Conte?

11:29:37 4 A. I was.

11:29:38 5 Q. Do you recall when counsel for Wells Fargo described a  
11:29:43 6 reason why they think the Wells Fargo system doesn't  
11:29:46 7 infringe the USAA patents?

11:29:48 8 A. I was.

11:29:49 9 Q. And is it your understanding that their position is  
11:29:53 10 they do this OCR on the server, and so that can't infringe  
11:29:56 11 the patents?

11:29:58 12 A. Yes, I understand that's their position.

11:30:00 13 Q. And what's your response to that?

11:30:02 14 A. Well, first, the patent calls out that it can happen on  
11:30:09 15 the server. Remember how I said this is a pretty  
11:30:12 16 sophisticated algorithm. You want to do it on your big  
11:30:15 17 iron hardware. You want to do it because it's going to  
11:30:18 18 prevent someone from getting away with depositing a \$5.00  
11:30:21 19 check as a \$500.00 check. So you want to use the most  
11:30:25 20 advanced version of software you've got.

11:30:27 21 Until fairly recently, mobile phones didn't have  
11:30:31 22 that kind of computing power. And so also, if I look at  
11:30:37 23 the claim itself, it's clear that this happens or is  
11:30:44 24 allowed to happen anywhere in the Wells Fargo system.

11:30:51 25 Q. In Claim 12 of the '681 patent, what component of the

11:30:55 1 claim is required to perform the optical character  
11:30:58 2 recognition on the check?

11:31:00 3 A. The claim is really clear. It says, the system. It  
11:31:04 4 doesn't say the customer's mobile device. It says, the  
11:31:08 5 system.

11:31:09 6 Q. And what is the system in Claim 12?

11:31:11 7 A. Well, read the claim. It starts with a system for  
11:31:20 8 allowing a customer to deposit a check, the system  
11:31:22 9 including. And it calls out the customer's mobile  
11:31:27 10 device -- I've highlighted that here -- and a computer  
11:31:29 11 associated with the bank. That's the server. So it's  
11:31:30 12 saying anything in that red rectangle can do the optical  
11:31:34 13 character recognition. That's what the claim says.

11:31:36 14 Q. So is there any problem with infringement of Claim 12  
11:31:39 15 of the '681 patent based on doing OCR on a bank's server?

11:31:45 16 A. No.

11:31:47 17 Q. So is Element H of the claim -- of Claim 12 of the '681  
11:31:52 18 patent present in the Wells Fargo system?

11:31:53 19 A. It is.

11:31:54 20 Q. And so what did you look at next?

11:31:56 21 A. Next I looked at using a wireless network to transmit a  
11:32:01 22 copy of the photos, and then submitting the check for  
11:32:07 23 mobile deposit in the bank after the photos of the check  
11:32:09 24 are presented to the customer.

11:32:10 25 Q. And how does that work in the Wells Fargo system?

11:32:12 1 A. Well, we saw that, right, that, first, when you take a  
11:32:17 2 picture, it's not going to allow you to submit the copies  
11:32:21 3 of the check until it's shown you the copies you've taken  
11:32:27 4 of both sides of the check.

11:32:29 5 But another thing is that each time you take a  
11:32:31 6 picture in the Wells Fargo system, it sends that picture to  
11:32:34 7 the bank server.

11:32:38 8 Q. And so what's the next element you looked at?

11:32:41 9 A. The next element I looked at is a computer associated  
11:32:44 10 with a bank. That's the server -- programmed to update a  
11:32:49 11 balance of an account to reflect the check submitted for  
11:32:54 12 mobile check deposit.

11:32:55 13 Q. And Element J specifically calls out a computer  
11:32:59 14 associated with the bank; is that right?

11:33:01 15 A. That's correct.

11:33:02 16 Q. So when you analyze this claim element, updating a  
11:33:04 17 balance of the account, that's something that has to happen  
11:33:08 18 on a bank computer, right?

11:33:10 19 A. That's correct.

11:33:12 20 Q. And did you find that updating of account balances on  
11:33:16 21 the Wells Fargo bank computers?

11:33:17 22 A. Yes. It would be no surprise to you that they actually  
11:33:20 23 give you your money. And this is where it happens. This  
11:33:22 24 is in DTX-11. This is an excerpt from the source code on  
11:33:25 25 the server's side. And it says updateAccountInfo balance,

11:33:33 1 and that's what this code does.

11:33:33 2 Q. So is Claim Element J present in the Wells Fargo

11:33:39 3 system?

11:33:39 4 A. It is.

11:33:40 5 Q. And what's the last element on your list there?

11:33:43 6 A. So the last element is, the system configured to

11:33:45 7 generate a log file. The -- the log file includes an image

11:33:48 8 of the check submitted for mobile deposit.

11:33:48 9 Q. And did you find such a log file in the Wells Fargo

11:33:52 10 system?

11:33:52 11 A. Yes. Again, it's no surprise that Wells Fargo

11:33:55 12 maintains a log.

11:33:58 13 Q. Let me ask. Element K starts the system configured; is

11:34:03 14 that right?

11:34:03 15 A. That's correct.

11:34:03 16 Q. So is this another one of these elements where the

11:34:05 17 functionality could be on the mobile device or the bank

11:34:08 18 servers?

11:34:08 19 A. Yes, it could be on the mobile device or the bank

11:34:14 20 server, anything in that red rectangle.

11:34:14 21 Q. And in the Wells Fargo system, where does the log file

11:34:16 22 get generated?

11:34:17 23 A. It gets generated on the server. And I looked at the

11:34:21 24 source code, DTX-11. And you'll see -- again, no surprise,

11:34:25 25 they keep a log of each check that gets deposited. It

11:34:30 1 keeps a log of the customer account number, the check  
11:34:33 2 amount -- that check DNA, the MICR information, the device  
11:34:38 3 info, confirmation code, and then a bi-tonal TIFF check  
11:34:45 4 image.

11:34:45 5 Q. And what is a bi-tonal TIFF check image?

11:34:48 6 A. So bi-tonal means black and white, and TIFF is a  
11:34:52 7 specific format required by law for electronic deposits.

11:34:55 8 And so this is, in fact, the TIFF image of this check here.

11:35:01 9 Q. And why does it have to be black and white?

11:35:03 10 A. Because that's what the law says.

11:35:05 11 Q. So are all the elements of Claim 12 of the '681 patent  
11:35:13 12 present in the Wells Fargo system?

11:35:15 13 A. Yes. We've walked through each and every one, and I've  
11:35:18 14 shown you my evidence. They're all present.

11:35:20 15 Q. And so what other claims did you look at in the '681  
11:35:22 16 patent?

11:35:22 17 A. Well, I looked at a number of other claims. The good  
11:35:28 18 news is, I think, that a lot of the evidence we just went  
11:35:31 19 through is going to be the same evidence we need for the  
11:35:34 20 other claims. So the rest of what happens for all the  
11:35:38 21 claims that come is going to happen a little faster.

11:35:40 22 I looked at Claim 13, 14, 20, and 22. These are  
11:35:45 23 dependent claims on Claim 12. And then at Claim 30.

11:35:52 24 Q. So what does Claim 13 add to Claim 12?

11:35:57 25 A. So let's see, it says: A system of Claim 12, wherein

11:36:00 1 the optical character recognition includes comparing the  
11:36:03 2 determined amount to an amount indicated by the customer.  
11:36:06 3 And we already saw that. It does do that  
11:36:09 4 comparison. I verified that in the source code. But also,  
11:36:13 5 if it doesn't match, in my experimentation, you'll see this  
11:36:18 6 error message pop up.  
11:36:24 7 Q. And so if the dollar amount you put in the application  
11:36:24 8 doesn't match what's actually on the check, they're not  
11:36:26 9 going to put that money in your bank account; is that how  
11:36:29 10 it works?  
11:36:29 11 A. No, they -- they're not going to trust you on what you  
11:36:31 12 said was on the check.  
11:36:32 13 Q. So is Claim 13 present in the Wells Fargo system?  
11:36:38 14 A. It is.  
11:36:38 15 Q. And so what does Claim 14 add to Claim 12?  
11:36:41 16 A. So Claim 14 adds: Wherein the system is configured to  
11:36:45 17 perform the update after it is determined that the -- that  
11:36:49 18 there's some mark or signature on the back -- in the  
11:36:53 19 endorsement location on the back of the check.  
11:36:56 20 Q. And does Wells Fargo look for a mark or signature in  
11:37:00 21 that endorsement location?  
11:37:02 22 A. It does. In fact, it looks for two things. It looks  
11:37:07 23 for a -- a customer signature, and but it also -- since  
11:37:09 24 2018, checks have been showing up with this check box for  
11:37:15 25 mobile remote deposit. So it looks to see if you checked

11:37:20 1 that, as well.

11:37:21 2 Q. So is Claim 14 present in the Wells Fargo system?

11:37:26 3 A. It is.

11:37:27 4 Q. And what's added in -- in Claim 20 to Claim 12?

11:37:28 5 A. Claim 20 adds that the mobile app causes the customer's  
11:37:32 6 mobile device to have an additional step of receiving input  
11:37:35 7 from the user about the amount of the check.

11:37:37 8 Q. And so are these dependent claims just sort of calling  
11:37:41 9 out particular features of -- of the invention that might  
11:37:44 10 be implemented?

11:37:45 11 A. Yes, they are.

11:37:46 12 Q. So let's look at Claim 22. What -- what does Claim 22  
11:37:52 13 require?

11:37:53 14 A. Claim 22 is the system of Claim 12 wherein the  
11:37:56 15 confirming step takes place after a duplicate detection is  
11:38:00 16 performed on the check.

11:38:02 17 Q. And can you explain what duplicate detection is?

11:38:05 18 A. Yeah. The bank wants to make sure that someone doesn't  
11:38:10 19 try to deposit the same check twice. So what the bank does  
11:38:14 20 is they look at the DNA, the MICR line, to see if that's  
11:38:17 21 been already deposited.

11:38:18 22 Q. And so a customer trying to deposit a check twice, is  
11:38:22 23 that a type of fraud?

11:38:24 24 A. Yes.

11:38:24 25 Q. And is duplicate detection a way of preventing that

11:38:28 1 fraud?

11:38:28 2 A. Yes, absolutely.

11:38:29 3 Q. Claim 22, that requires the duplicate detection to be  
11:38:38 4 formed before confirming the deposit; is that your  
11:38:40 5 understanding?

11:38:40 6 A. Yes, that's my understanding.

11:38:41 7 Q. And how did you determine that the Wells Fargo system  
11:38:45 8 does that required duplicate detection?

11:38:48 9 A. I did it two ways. One is I looked in the source code,  
11:38:51 10 and I found that it does that.

11:38:53 11 The other way, though, is we have sworn testimony  
11:38:57 12 of the Wells Fargo corporate representative, Mr. Arun  
11:39:04 13 Darpally, and he said under oath, we look into our database  
11:39:07 14 to see the same MICR line and the amount are already there  
11:39:12 15 present in the database in the last 90 days. If, yes, we  
11:39:16 16 show the user the duplicate message.

11:39:20 17 Q. Dr. Conte, I'm going to step back a couple slides, in  
11:39:23 18 excess of caution, and ask you: Is Claim 20 present in the  
11:39:26 19 Wells Fargo system?

11:39:27 20 A. Yes, Claim 20 was asking the user to enter an amount.

11:39:31 21 And, yes, that's present.

11:39:33 22 Q. So what's the next claim in the '681 patent that you  
11:39:38 23 looked at?

11:39:38 24 A. I looked at Independent Claim 30.

11:39:42 25 Q. And what does Claim 30 look like?

11:39:44 1 A. Well, in your notebook, it will look like this on the  
11:39:48 2 left. And what I've done again is I've used the larger  
11:39:52 3 font. And I've put it into a table, and I've labeled each  
11:39:55 4 of the elements A through H.

11:39:58 5 Q. And so what's the first element of Claim 30?

11:40:03 6 A. The first element is a non-transitory computer-readable  
11:40:07 7 medium storing an app that when downloaded and run by the  
11:40:11 8 consumer's device, causes the customer's device -- the  
11:40:14 9 customer's device to perform a mobile deposit.

11:40:17 10 Q. And so this claim begins a little differently than  
11:40:21 11 Claim 12 which started the system or a system; is that  
11:40:23 12 right?

11:40:23 13 A. Yeah. My -- my understanding is that this is a way to  
11:40:28 14 write a claim about a -- a piece of software. And it  
11:40:32 15 includes this idea of a non-transitory computer-readable  
11:40:37 16 medium storing something -- storing an app.

11:40:39 17 Q. And so are these Elements B through H, are those steps  
11:40:44 18 that the Wells Fargo software causes the Wells Fargo system  
11:40:51 19 to perform?

11:40:51 20 A. Yes. The Wells Fargo software causes the Wells system  
11:40:53 21 to perform Steps B through H.

11:40:55 22 Q. And did you determine if the Wells Fargo application is  
11:40:57 23 stored on a computer-readable media?

11:41:00 24 A. Yeah. I tripled down on this. So, first, it's stored  
11:41:04 25 in non-transitory computer-readable media when it -- when

11:41:07 1 it's on your phone, right? That's the flash storage on  
11:41:10 2 your phone.

11:41:12 3 But, also, recall, you got that from an App Store.

11:41:15 4 Well, in the App Store, it's stored on a non-transitory  
11:41:21 5 computer-readable media. That's the disk on the server of  
11:41:25 6 the App Store.

11:41:27 7 Now, a third example is, of course, the Wells  
11:41:29 8 Fargo programmers stored the app on their own development  
11:41:33 9 computer disk when they were developing the app. So for  
11:41:36 10 three different reasons Wells Fargo infringes this element.

11:41:41 11 Q. And in that third example, is the Wells Fargo  
11:41:44 12 application something that Wells Fargo makes?

11:41:45 13 A. Yes.

11:41:46 14 Q. And is the -- is Wells Fargo using a non-transitory  
11:41:52 15 computer-readable medium to store that application?

11:41:54 16 A. Yes, it is.

11:41:56 17 Q. Would there be any way for Wells Fargo to distribute  
11:42:02 18 its application to customers without doing that step?

11:42:04 19 A. No, there would be no way.

11:42:05 20 Q. So what did you look at next in Claim 30?

11:42:08 21 A. Well, we could go through each of these, and you'll see  
11:42:11 22 that it would be *déjà vu*. So each of these elements are  
11:42:17 23 present already, for reasons that I provided in Claim 12.

11:42:21 24 Q. And can you explain for the jury how Claim 12 and  
11:42:24 25 Claim 30 of the '681 patent match up?

11:42:27 1 A. Yes. What I've done here is with colors and arrows,  
11:42:33 2 I've shown you how each element of Claim 12 that we already  
11:42:37 3 showed infringed map to elements in Claim 30.  
11:42:41 4 So, for example, E in 12 maps to B in 30. And F  
11:42:46 5 in 12 maps to C and D in 30, et cetera.  
11:42:51 6 Q. Is there a slight difference between how Element F, the  
11:42:56 7 confirming limitation in Claim 30, is worded versus  
11:43:01 8 Element H in Claim 12?  
11:43:03 9 A. Yes. So actually, Element H is a little more  
11:43:07 10 restrictive. It says that the confirming happens after the  
11:43:10 11 system performs optical character recognition.  
11:43:13 12 F says just that the optical character recognition  
11:43:15 13 is performed.  
11:43:17 14 Q. So it doesn't necessarily have to be performed by any  
11:43:19 15 particular component in Claim 30?  
11:43:21 16 A. That's correct.  
11:43:24 17 Q. And so are -- are Claim Elements B through F met in --  
11:43:29 18 in the Wells Fargo system, Claim 30?  
11:43:30 19 A. They are.  
11:43:31 20 Q. What's the next element that you looked at?  
11:43:34 21 A. It's Element G, which says, checking for errors. Now,  
11:43:38 22 we've already seen some of that, right? We saw it check  
11:43:42 23 for errors if the -- the check amount didn't match the  
11:43:44 24 amount entered or if the MICR line wasn't on the check  
11:43:49 25 image.

11:43:49 1           But also, there's other errors that it checks for.

11:43:57 2       Here's an example of an error that it checks for when it's

11:43:59 3       communicating with the server. So this is on the mobile

11:44:00 4       app side. And you'll see it says check for errors.

11:44:04 5       Q. So is Element G present in the Wells Fargo system?

11:44:06 6       A. Element G is also present.

11:44:09 7       Q. And so what's the last element in Claim 30?

11:44:12 8       A. The last element is, using a wireless network

11:44:17 9       transmitting a copy of photos over a public communication

11:44:21 10       network from the mobile device, submitting the check for

11:44:25 11       mobile deposit after the customer is authenticated, the

11:44:29 12       photos of the check presented to the customer, and the

11:44:31 13       customer's mobile device checking for errors.

11:44:34 14           So let's walk through that.

11:44:36 15       Q. Well, how does that relate to Claim 12, or how does

11:44:39 16       that match up with what you've already talked about for

11:44:45 17       Claim 12?

11:44:46 18       A. Well, that language about transmitting a copy of the

11:44:48 19       photos over a public communications network, that's also

11:44:50 20       present in Claim 12, Element I, and we saw that.

11:44:53 21       Q. Are there some additional requirements in Claim H --

11:44:57 22       or, excuse me, Element H of Claim 30?

11:44:59 23       A. There are. One is submitting the check for mobile

11:45:04 24       check deposit after the customer has authenticated. So we

11:45:08 25       already went through that user name and password

11:45:10 1 authentication. And you can't submit until the photos are  
11:45:17 2 presented because you don't have that button enabled,  
11:45:22 3 right? You can't even ask the teller inside your phone to  
11:45:26 4 submit the check until it presents both images you took and  
11:45:30 5 you can verify they're good images.

11:45:32 6 And also, the last piece of this is the mobile  
11:45:36 7 device checks for errors. And I just showed you that in  
11:45:39 8 Element G.

11:45:40 9 Q. Now, some of these steps you've talked about describe  
11:45:47 10 different steps that happen during the mobile deposit  
11:45:50 11 process in the Wells Fargo app, right?

11:45:52 12 A. That's correct.

11:45:53 13 Q. Are any of the elements of the claims in the '681  
11:45:59 14 patent that you've analyzed steps that the customer  
11:46:02 15 performs?

11:46:04 16 A. No, none of these are -- are customer steps.

11:46:07 17 Q. So what is actually performing these steps, like  
11:46:10 18 presenting the photos or confirming the deposit in the  
11:46:12 19 Wells Fargo system?

11:46:13 20 A. The Wells Fargo software is doing this.

11:46:15 21 Q. So is Element H of Claim 30 present in the Wells Fargo  
11:46:19 22 system?

11:46:20 23 A. Yes, it is.

11:46:21 24 Q. And so could you summarize for the jury now what  
11:46:26 25 conclusions you've reached with respect to the '681 patent

11:46:30 1 claims?

11:46:30 2 A. All right. So for all the evidence that I've shown

11:46:33 3 you, the asserted claims of the '681 patent I found were

11:46:38 4 present in the Wells Fargo Mobile Deposit system.

11:46:41 5 Q. So moving on to the '605 patent, what claims did you

11:46:45 6 look at there?

11:46:47 7 A. Here, I looked at Claim 12, 13, 14, and 22, and

11:46:51 8 Claim 1, 3, and 11. And, again, you'll see much of the

11:46:57 9 same evidence I used in the '681 we can reuse here. So

11:47:04 10 these will go a little faster.

11:47:07 11 Q. So what does Claim 12 of the '605 patent look like?

11:47:13 12 A. Claim 12 of the '605 is shown here. It is labeled in

11:47:22 13 Rows A through N. Again, on the left is how it appears in

11:47:24 14 your juror notebooks. On the right, all I've done is I've

11:47:27 15 used a bigger font, made it a little easier to read.

11:47:30 16 Q. And is it your understanding that for the -- for

11:47:32 17 Claim 12 of the '605 patent, there's actually no dispute

11:47:37 18 that any individual element is present in the accused Wells

11:47:40 19 Fargo system?

11:47:41 20 A. That's correct. It's my understanding that there's no

11:47:43 21 dispute about any of these claim elements.

11:47:45 22 Q. Is there some correspondence between Claim 12 of the

11:47:50 23 '605 patent and the things you've discussed for the '681

11:47:54 24 patent, as well?

11:47:54 25 A. There is. So on the left is the claim we're talking

11:48:00 1 about. On the right is Claim 12 of the '681. And, again,  
11:48:04 2 I've shown you a mapping using color coding and arrows of  
11:48:10 3 how Element A through I of Claim 12 of the '605 patent map  
11:48:15 4 to Element A through G and I of Claim 12 of the '681.

11:48:20 5 Q. So are Elements A through I of Claim 12 of the '605  
11:48:25 6 patent present in the Wells Fargo system?

11:48:26 7 A. They are.

11:48:29 8 Q. So moving on to Elements J through N, how did that  
11:48:34 9 correspond to the analysis you've done for the '681 patent?

11:48:38 10 A. So J through N map to Elements H, J, and K in Claim 12,  
11:48:46 11 and you can see that, for example, Element J is essentially  
11:48:50 12 the same element. Element K is -- of the Claim 12 is  
11:48:57 13 divided into two parts here, K and N, in Claim 12 of the  
11:49:06 14 '605, and then Element H is divided into two elements in  
11:49:13 15 the '605 patent, Claim 12, L and M. But they're all  
11:49:16 16 present.

11:49:17 17 Q. And do you see Element K says the system configured to  
11:49:22 18 perform additional steps including; do you see that?

11:49:24 19 A. Yes, I do.

11:49:25 20 Q. And then what's the -- what's the Element L under that?

11:49:28 21 A. The Element L is that confirming that the mobile check  
11:49:33 22 deposit can go forward after performing optical character  
11:49:36 23 recognition. So that's saying -- calling out rather  
11:49:41 24 explicitly that the system performs the optical character  
11:49:46 25 recognition.

11:49:46 1 Q. And is that any different from that claim element we  
11:49:50 2 looked at in '681 patent Claim 12?

11:49:52 3 A. No, it's not. The '681, again, calls out that the  
11:49:58 4 system, that whole rectangular red box of the server and  
11:50:00 5 the app running on the phone can perform optical character  
11:50:04 6 recognition. It can happen anywhere in that box.

11:50:06 7 Q. But is it your understanding that Wells Fargo disagrees  
11:50:11 8 about that element in Claim 12 but not in -- excuse me,  
11:50:14 9 Claim 12 -- let me strike that and just start that over.

11:50:17 10 Is it your understanding that Wells Fargo  
11:50:19 11 disagrees that the confirming limitation is met in Claim 12  
11:50:23 12 of the '681 patent but has no such disagreement about the  
11:50:28 13 same element in Claim 12 of the '605 patent?

11:50:30 14 A. Yes, that's my understanding.

11:50:34 15 Q. So are Elements J through N in the '605 patent Claim 12  
11:50:39 16 present in the Wells Fargo system?

11:50:41 17 A. They are.

11:50:41 18 Q. And so what's the next independent claim that you  
11:50:46 19 looked at in the '605 patent?

11:50:47 20 A. I looked at Claim 1.

11:50:50 21 Q. And can you give the jury a sense of what Claim 1 looks  
11:50:54 22 like?

11:50:55 23 A. Claim 1 is perhaps the longest claim here. So you'll  
11:50:59 24 see it on the left there, and, again, I've broken it into a  
11:51:03 25 table with a bigger font, and I've given each of the rows,

11:51:06 1 each of the elements the label A through O.

11:51:10 2 THE COURT: Let me interrupt. Before we dive into  
11:51:13 3 A through O, the jury's lunch is in the jury room, waiting  
11:51:16 4 for them, I've been advised by the clerk. So we're going  
11:51:19 5 to take this opportunity to recess for lunch.

11:51:23 6 Ladies and gentlemen of the jury, if you'll take  
11:51:24 7 your notebooks with you to the jury room over the lunch  
11:51:27 8 hour. If you'll follow all the instructions I've given  
11:51:30 9 you, including, as you would expect me to remind you, not  
11:51:33 10 to discuss the case with each other. And we'll be back to  
11:51:36 11 continue with this testimony after we break for lunch.

11:51:38 12 It's about 10 minutes until 12:00 now. We'll  
11:51:42 13 attempt to reconvene somewhere around 12:30, 12:40.

11:51:49 14 With that, the jury is excused for lunch.

11:51:52 15 COURT SECURITY OFFICER: All rise.

11:51:53 16 (Jury out.)

11:51:54 17 THE COURT: The Court stands in recess for lunch.

18 (Recess.)

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1 CERTIFICATION  
2  
3

4 I HEREBY CERTIFY that the foregoing is a true and  
5 correct transcript from the stenographic notes of the  
6 proceedings in the above-entitled matter to the best of my  
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